



UNITED NATIONS
Office on Drugs and Crime



ASSESSMENT OF THE INTEGRITY AND CAPACITY OF THE JUSTICE SYSTEM IN THREE NIGERIAN STATES

Technical Assessment Report

January 2006

UNITED NATIONS OFFICE ON DRUGS AND CRIME
Vienna

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The present report was prepared by the Global Programme against Corruption of the United Nations Office on Drugs and Crime in collaboration with the Nigerian Institute of Advanced Legal Studies.

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Acknowledgements

The following staff of the United Nations Office on Drugs and Crime and the Nigerian Institute of Advanced Legal Studies contributed to the preparation of this report:

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Foreword

With great pleasure, I note the completion of this important study of the justice system in Borno, Delta and Lagos states, which was conducted by the United Nations Office on Drugs and Crime in collaboration with the Nigerian Institute of Advanced Legal Studies. While in some respects it draws a somewhat sobering picture of our courts—in particular as far as the extent and nature of corruption is concerned—it provides us for the first time with a comprehensive assessment of the condition of the courts at the time when the study was conducted. However, there are reasons for optimism, as the efforts that we have undertaken, some with the help of our development partners, are starting to bear fruit in enhancing the professionalism, effectiveness, integrity, accountability and transparency of the courts. This should encourage us in the Judiciary, together with the State and Federal Ministries of Justice, the Police, the Prison Service and the Bar, to use the assessment as the basis to improve the services we deliver to our citizens and to those who come to our country to invest and participate in our economy, to punish effectively those who violate our laws and to protect the poor and the weak.



Mohammad Lawal Uwais, GCON
Chief Justice of Nigeria

Summary

The primary purpose and main objectives of the technical assessment project were to arrive at a broad understanding of the state of integrity and capacity within the justice sector in Nigeria. For that purpose, the study explored Nigeria's current levels of access to justice, the timeliness and quality of justice delivery, the independence and impartiality of the judiciary and corruption and public trust in justice sector institutions.

The report presents statistics and data drawn from live interviews held with specific groups within the justice system: judges, lawyers, court users, court staff, the police and prisoners awaiting trial. Respondents were asked set questions designed to ascertain their experience and perceptions based on a specific day in court in three pilot states. The results of the interviews are presented in narrative and graphic form in chapter V.

Drawing on and analysing the data, and paying particular attention to the reinforcing interdependencies of the various problems, the report presents key findings relating to the perceptions and experience of the target groups in terms of delivery of justice and integrity of the justice system and identifies the root causes of the problems. Chapter III of the report presents a detailed analysis of the data gathered from the interviews, organized around 17 key findings.

Based on the key findings, chapter IV presents detailed policy recommendations for judicial reform measures aimed at increasing accessibility to the courts, making justice delivery more efficient, enhancing the public's trust in the justice system, increasing the independence, fairness and impartiality of the judiciary and curbing corruption within the justice sector.

I. Introduction

A. Background

With an estimated population of 130 million, a growth rate of 2.2 per cent, an average life expectancy of 46 years¹ and about 44.1 per cent of the population living in urban areas, Nigeria is the most populous country in sub-Saharan Africa. Nigeria is a multi-ethnic, multi-religious society comprising more than 252 different ethnic groups and tribes. This diversity makes Nigeria one of the most complex societies in Africa, with attendant consequences for corruption, political instability and ethnic and communal clashes, among other problems.²

Nigeria is the largest producer and exporter of petroleum oil (a major source of foreign exchange) in Africa, about sixth in the world. It has excellent climate conditions for productive agriculture. The country is heavily endowed with solid minerals together with other natural resources. Yet, Nigeria is classified as one of the poorest countries in the world, ranking 151 out of 177 countries on the human development index contained in the *Human Development Report 2004* published by the United Nations Development Programme. The level of poverty is high, with over 70 per cent of the population living below the income poverty line. Gross national income was estimated by the World Bank to be US\$ 290 per capita in 2001. Conversely, the adult literacy level is relatively high at approximately 61.1 per cent, and yet employment opportunities are scarce. Nigeria's overdependence on oil as the largest source of revenue for the Government has not only stifled prospects for other productive sectors of the economy, but has also created avenues for illicit enrichment through corrupt practices.

Politically, the country has been under military rule for over 29 years of its 43 years of political independence. Under the military, the rule of law was paid little attention and governance was subject to draconian rules. The Constitution provides for separation of powers and therefore, independence of the three arms of government (the executive, the legislature and the judiciary); however, such independence has been more or less theoretical, especially during military administration. Corruption was bound to grow and flourish in such circumstances.

Nigeria has been rated as one of the most corrupt countries in the world and corruption in the country has reached alarming proportions.³ Corruption is of course not unique to Nigeria; every country has its own particular problems in terms of corruption, depending on the magnitude, location and impact of corruption and the type of perpetrators. By far the most harmful and destructive effects of corruption are on the rule of law, in particular when the efficiency and effectiveness of the criminal justice system, which should be seen as the epitome of integrity, are undermined. Suffice it to say that there seems to be a vicious circle between corruption and other forms of socio-economic problems, such as poverty, unemployment and crime. This vicious circle makes it difficult to assert whether it is these related problems that are in fact the real causes or rather the symptoms of corruption. In Nigeria, evidence suggests that pervasive corruption is a major constraint on the efficient delivery of services, including the administration of justice.

Past studies focusing specifically on judicial corruption have given Nigeria a middle-ranking position, better than Kenya and the United Republic of Tanzania, but worse than Botswana, Ghana and Senegal.⁴

Corruption was one of the biggest challenges for President Olusegun Obasanjo when he took over as head of the present democratic Government. It remains one of the greatest governance challenges. The Government was quick to realize this and, in his inaugural address on 29 May 1999, President Obasanjo stated categorically that the fight against corruption would be at the top of the agenda for his administration. He promised to locate and uproot corruption wherever it existed and to deal with the perpetrators. The Government's determination and commitment were demonstrated when, with less than one month in office, the President presented a bill seeking the establishment of an anti-corruption commission with full powers to investigate, prosecute and punish offenders. Subsequently, the Independent Corrupt Practices and other Related Offences Commission (ICPC) was established in September 2000. From the outset, the Commission was faced with litigation regarding its jurisdiction⁵ and the challenges of investigating and successfully prosecuting cases of corruption.⁶

The Government has translated its commitment to good governance into a variety of policy initiatives and actions, including the following:

(a) Enactment of the Corrupt Practices and other Related Offences Act in June 2000 and the establishment of ICPC;

(b) Establishment of a number of investigatory panels, such as the Kolade Panel, to investigate and review all major contracts awarded by the previous military regimes, the Oputa Panel (similar to the South African Truth and Reconciliation Commission), to investigate human rights abuses during the past regimes, and two other panels established to investigate the activities of Nigeria Airways that had led to the liquidation of the national carrier, among others;⁷

(c) At the beginning of the present democratic Government, after constituting the Federal Executive Council, a retreat was organized with the assistance of Transparency International for the new ministers and permanent secretaries to sensitize these public officials on the policies and programmes of the Government and, most importantly, the need for the officials to exhibit the highest possible integrity, modesty, transparency and accountability by adhering strictly to the civil service rules and financial regulations. To that end, each minister and permanent secretary was required to make an undertaking in the form of an integrity pact. Similar retreats have been held periodically, leading to the adoption of the Kuru Declaration;⁸

(d) Seeking the support and cooperation of other concerned nations, the Government embarked on the recovery of assets stolen by former government officials and hidden abroad;

(e) Enactment of the Economic and Financial Crimes Commission (Establishment) Act in December 2002 and the subsequent establishment of the Economic and Financial Crimes Commission, also with full powers to enforce the law;

(f) In collaboration with the United Nations Office on Drugs and Crime (UNODC), a two-year national judicial integrity and capacity-building project was

launched in 2001, aimed at strengthening the capacity and efficiency of the judiciary;⁹

(g) A policy on the monetization of benefits of public officials was introduced at the beginning of 2003.¹⁰

Regardless of cynicism concerning the Government's genuine commitment and the tangential achievements in this connection, the efforts by the present civilian administration to address the problem of corruption signify a good beginning that could lay a foundation for subsequent improvements.

Indeed, combating corruption and related social vices is a fundamental prerequisite for institutionalizing the rule of law, maintaining public order and security and sustaining the fledgling democracy in Nigeria. It is also part of a broader objective of empowering the citizenry, strengthening law enforcement and judicial capabilities, as well as re-engineering a responsive private sector. In other words, institution-building is an important component of a comprehensive, meaningful and effective anti-corruption strategy.

The main pillars and objectives of the UNODC-supported project are the following:

(a) To develop, based on the findings of a comprehensive baseline assessment of the integrity and capacity of the justice system in three Nigerian states, namely Borno, Delta and Lagos, action plans for strengthening judicial integrity and capacity;

(b) To implement the action plans in nine pilot courts across the three pilot states to improve their performance in terms of (i) access to justice; (ii) timeliness and quality of the trial process; (iii) public confidence in the courts; (iv) efficiency and effectiveness in handling complaints against judges and court staff; and (v) coordination across the criminal justice system institutions (judiciary, Directorate of Public Prosecutions (DPP), police, prison services and the Bar).

(c) Ensure sustainability of reform measures by transferring skills and processes for planning, monitoring and implementation to the judiciaries in the pilot states and closely involving key institutions, such as the ICPC and the Nigerian Institute of Advanced Legal Studies;

(d) Identify and bring into the mainstream those measures that have proven to be successful during the pilot phase and support their implementation throughout all 36 states in Nigeria.

The project uses action-learning principles to pass ownership for the development and implementation of activities, together with responsibility for outcomes, to the host country. Sometimes reduced to the acronym CDAR (connect, decide, act, reflect), the concept is simple. Applied to this project, the elements were to bring stakeholders together (integrity meetings); to identify the nature and extent of the underlying problem (assessments); to use what had been learned from the assessments to develop an intervention (action plans), to implement three pilot projects and measure the impact (evaluation); and finally, to complete the circle by bringing stakeholders back together, learning lessons from what worked and what did not during the implementation phase and from the impact, and then refining the action plans accordingly. Action-learning principles were also employed in the

construction and activities of the implementation and subcommittees. The principal role of UNODC was as a facilitator.

Effective monitoring and evaluation of any project is as important as the project itself. To that end, a comprehensive assessment of judicial integrity and capacity in three pilot states (Borno, Delta and Lagos) was undertaken based on the 57 impact indicators agreed upon during the first Federal Integrity Meeting for Nigerian Chief Judges, held in Abuja on 26 and 27 October 2001.¹¹

B. Overview of pilot states

1. Lagos state

Located in the south-western part of the country, Lagos is the commercial capital of Nigeria, having lost the seat of government to Abuja in 1991. Lagos state is densely populated, with a population of 5.7 million according to the 1991 census and a land mass of 1,800 square kilometres. The state is a melting pot of all the socio-cultural groups in Nigeria as well as foreigners, although the major indigenous groups are the Aworis, Egun, Ijebu and Egbas. The predominant religions are Islam, Christianity and Traditionalism. The major economic activities of the state include commercial and industrial activities, trading, agriculture and fishing.

The volume of litigation within the Lagos state judiciary is expectedly very high, with an average of 11,000 cases filed annually. However, owing to inherent problems in the judiciary, the rate of disposal of cases remains less than 50 per cent of the cases filed annually. The court system comprises customary courts, magistrate courts and high courts. Appeals go from the State High Court to the Court of Appeal and the Supreme Court. Recent judicial reforms, including the creation of specialized divisions at the high court level, new civil procedure rules and a multi-door court house, are designed to ease the present caseload of the courts and ensure a speedier disposal of cases.

2. Delta state

Delta state is located in the southern geopolitical zone of the country. The state is within the Niger Delta, where oil exploration and exploitation activities are extensive. The industrial and commercial activities of the state are therefore dominated by oil exploration and service companies. The population of the state amounted to approximately 2.6 million at the 1991 census, although the 1996 projection puts the population at 2.9 million. The predominant ethnic groups are Urhobo, Iyalla, Ika (Ibo) and Isoko. The predominant religion in the state is Christianity, followed by Islam and Traditionalism.

Major economic activities in the state, apart from oil exploration and steel-making, include palm products, timber, plywood and rubber. The citizens are enlightened and litigation-conscious. The major cases filed in the courts include civil compensation claims concerning land and environmental claims. The court system comprises customary courts, magistrate courts, customary courts of appeal and high courts. Appeals from the High Court go to the Court of Appeal and the Supreme Court.

3. Borno state

Borno state is situated in the north-east geopolitical zone of the country, with a population of 2.5 million according to the 1991 census, although the 1996 projection put the population at 2.9 million. The population of the state is predominantly Traditionalist or Moslem, with an estimated 1 million and 705,222 adherents, respectively. The sharia legal system was recently declared in the state, although at the time of the present research the enabling legislation had yet to be passed into law.

Economic activities in the state include wood and leather craftsmanship, trans-Saharan trade and cattle rearing. Litigation in the state is mainly in the area sharia courts, where disputes are settled on the basis of customary or Islamic law. The volume of litigation at the high court level is comparatively lower than that of the other pilot states, as most cases are concluded in the courts of first instance, the area and sharia courts, with a low rate of appeal. Appeals from the sharia courts go to the Sharia Court of Appeal. Appeals from the High Court proceed to the Court of Appeal or the Supreme Court.

C. Assessment of judicial integrity and capacity

Understanding a problem in its proper context is an important step towards finding a solution. Although a few empirical studies have been carried out in the past on the justice system in general and the problem of corruption in particular in Nigeria, there is insufficient data on the specific nature, extent and locations of corruption that would guide meaningful policy formulation and enforcement.¹² One of the main objectives of the judicial integrity and capacity project was therefore to bridge this gap by conducting an assessment to determine the current status of integrity and capacity in the justice system in the three pilot states.

1. Objectives

The main thrusts and objectives of the present assessment were to have a full understanding of the levels of integrity and capacity of the various justice sector institutions in the three pilot states. More specifically, the study assessed:

- (a) Access to justice;
- (b) Timeliness of justice delivery;
- (c) Quality of justice delivery;
- (d) Independence, impartiality and fairness of the judiciary;
- (e) Public trust in the judiciary;
- (f) Corruption within the justice sector.

It also explored the institutional and legal framework to fight corruption and conducted a case audit, focusing in particular on the potential abuse of procedural or substantive discretion.

2. Methodology

The methodology for the research included a desk review of existing literature on the justice system; a desk review of laws relating to corruption; and a case analysis of judgements and rulings on bail applications for drug-related cases and land matters in Lagos state; armed robbery and land matters in Delta state; and theft and land cases in Borno state. The centerpiece of the study consisted of a survey of judges, lawyers, prosecutors, court users, businesses, prisoners awaiting trial and court staff.

The research team, using field workers, adopted a one-on-one interview process using prepared surveys and questionnaires on the following segments and groups:

- (a) Judges;
- (b) Lawyers, prosecutors and defenders;
- (c) Court users;
- (d) Business people;
- (e) Serving court staff;
- (f) Retired court staff;
- (g) Prisoners awaiting trial.

The sampling took into account diverse characteristics of the pilot states, such as peculiarities of the legal environment and variety and density of the courts.

A combination of multi-stage stratification and simple random sampling was used to ensure that equal chances and opportunities were given to every segment of the sample frame and that all categories or social groups were represented in proportion to the size of the group in the universe as a whole.

To ensure that the sample technique was representative of the different judicial divisions and magisterial districts in the three pilot states, a given number of places and courts in each state were chosen for the purpose of sampling.

To achieve maximum results, semi-structured, and in some cases both open-ended and closed-ended, questionnaires were administered by trained research assistants.

3. Characteristics of the sample groups and segments

Table 1
Universe population

<i>Group</i>	<i>Lagos</i>	<i>Delta</i>	<i>Borno</i>	<i>Total</i>
High court judges	54	28	15	97
Magistrate court judges	99	64	27	190
Customary court of appeal/sharia court of appeal judges	-	3	3	6
Area customary court/upper area court judges	-	80	22	102
District customary court/area court judges	230	154	54	438
Lawyers	1 500	500	150	2 150

<i>Group</i>	<i>Lagos</i>	<i>Delta</i>	<i>Borno</i>	<i>Total</i>
Court users	11 000	1 200	1 000	13 200
Subtotal	12 883	2 029	1 281	16 183

Notes

About 11,000 cases are filed annually in Lagos state, although not all of them proceed to trial.

Lagos state has four judicial divisions and seven magisterial districts.

Lagos state does not have a customary court of appeal.

There are vacancies for four additional judges before the Customary Court of Appeal in Delta state.

The area customary courts in Delta state are presided over by legal practitioners, with two other lay members.

The district customary courts in Delta state are presided over by lay judges.

Area courts in Borno state are divided into area and upper area courts.

With effect from 20 December 2001, 15 of the area court judges in Borno state were converted to sharia court judges.

The total size of the universe for the research was 16,183. The projection was to survey 30 per cent of the universe, or some 4,855 individuals. This target figure was surpassed by the research team owing to the adoption of a more robust sampling technique. The sample size achieved during the research was thus 5,766, distributed as follows:

Table 2
Distribution of survey sample

<i>Survey group</i>	<i>Lagos</i>	<i>Delta</i>	<i>Borno</i>	<i>Total</i>
Court users	561	541	573	1 675
Judges	43	40	31	114
Lawyers/prosecutors	395	109	44	548
Business people	156	80	43	279
Prisoners awaiting trial	1 206	591	353	2 150
Serving court staff	561	268	154	983
Retired court staff	-	6	11	17
Total	2 922	1 635	1 209	5 766

The data gathered from the field was examined by the Nigerian Institute of Advanced Legal Studies for completeness, consistency and accuracy of responses. It revealed some instances of poor understanding of the questions by the respondents. However, the number of these was clearly negligible. The data were thereafter entered on spreadsheets as a first stage of analysis. The second stage of the data evaluation and analysis was carried out by the Global Programme against Corruption at UNODC. This phase consisted of categorization of the data into three main areas: description, analysis and recommendations.

The descriptive part collated the evidence gathered from interviewees. The data was aggregated into six categories, in accordance with the indicators determined by the first Federal Integrity Meeting of Nigerian Chief Judges, namely access to justice, quality and timeliness of justice delivery, corruption and public trust in the justice system institutions and independence and impartiality of the judiciary. This included a comparison both across states and across categories of respondents.

The data analysis comprised the formulation of assumptions and hypotheses concerning relationships between causes and consequences drawn from the findings of the descriptive part. Through the creation of indices¹³ of corruption, accessibility, timeliness, quality, public trust, independence, fairness and impartiality of the courts and the use of statistical parametric and non-parametric techniques, it was possible to identify the existence and the magnitude of the relationships between those variables. For the purpose of the data analysis, the single indicators for each of the six areas of judicial reform were integrated into perception and experience indices reflecting accessibility, timeliness and quality of justice delivery; judicial independence, fairness or impartiality; and corruption of and public trust in the justice system.¹⁴ Based on the results found, the hypotheses and major assumptions were compared and verified by applying conventional statistical and criminological theories.

Policy recommendations were extracted from the inputs provided by the judges and lawyers interviewed as part of the assessment; the UNODC-sponsored international judicial group, composed of the chief justices and senior judges of Bangladesh, India (Karnataka state), Nepal, Nigeria, South Africa, Sri Lanka, Uganda and the United Republic of Tanzania; the conclusions of the first Federal Integrity Meeting for Nigerian Chief Judges; and the findings resulting directly from the analysis of the data collected as part of the present assessment.

5. Limitations

It should be noted that although Nigeria is a common law country, in reality it operates a structural mix of common law, sharia law and customary law. This diversity was clearly understood at the outset during the selection of the pilot states, with Borno state as the only state where sharia was fully operational among the three states. It is therefore not unusual that such a study would encounter some constraints and relative differences. Reports submitted by fieldworkers in the course of the research revealed the following:

(a) Judges and lawyers were particularly difficult to interview on a one-on-one basis because of their busy schedules and they generally preferred the survey instruments to be left for them to attend to in their own time;

(b) Court users were not easily accessible to the fieldworkers: some demanded money before answering questions, some were screened away by their lawyers, and others expressed apathy in the research, contending that previous efforts were yet to bring about the expected benefits;

(c) Some of the many questions contained in the survey instruments needed to be explained for rational answers to be given to them; those who could not be interviewed face to face could not benefit from the explanations of fieldworkers and consequently a few of the respondents misunderstood the purport of the questions;

(d) Persons awaiting trial were generally apprehensive in answering questions relating to corruption in the justice system, especially with respect to the police, prison officials and judges, for fear of repercussions. The problem was compounded as most of them had to be interviewed in the presence of prison officials. There was a general feeling that they had been instructed not to make disparaging remarks about the system;

(e) Serving court staff were also not generally forthcoming on the issue of corruption and discipline within the judiciary for fear of repercussions;

(f) Retired court staff who would have been able to throw light on the state of the judiciary during their service were generally difficult to access as many had left for their respective villages soon after retirement. It was therefore not surprising that the fieldworkers could not interview anyone in this category in Lagos state.

(g) On the issue of corruption within the judiciary, lawyers and business people were more forthcoming on their experience of corrupt practices within the judicial system and on who should be blamed for the corruption.

Notes

¹ World Bank, *Little Data Book 2003* (Washington, D.C., 2003).

² Ethnic issues in Nigeria have deep historical roots. The foundation of the current Nigerian federalism is the mirror of the ethnic differences in the country, shaped since Nigerian independence from the British colonial administration in the 1960s. Each of the 36 states was determined by a long sequence of concessions beginning in the 1960s and continuing to the present granting political autonomy to significant ethnic groups, with the aim of allowing self-government. The result of this is a federal State structured on an ethnic basis: each state is populated by one major group and by different ethnic minorities, who experience less accessibility to the courts, less impartiality and more episodes of corruption. The Nigerian Constitution promotes national integration while prohibiting discrimination on the grounds of place of origin, sex, religion, status, ethnic or linguistic association or ties. The Constitution also stipulates that it is the duty of the states to provide adequate facilities for and encourage free mobility of people, goods and services throughout the federation and to secure full residence rights for citizens in all parts of the federation.

³ This has been the assessment of the corruption perceptions index of Transparency International since 1996.

⁴ Mikael Priks, "Institutions in corrupt societies", Licentiate thesis, Stockholm University, November 2001; and World Business Environment Survey, "Measuring conditions for business operation and growth". Private enterprise questionnaire, question number 11: "*In resolving business disputes, do you believe your country's court system to be honest/uncorrupt*" 1=always, 6=never, World Bank, Washington, D.C., 1997.

⁵ The issue of jurisdiction was resolved by the Supreme Court of Nigeria in a ruling in July 2002 in favour of the Commission.

⁶ These challenges range from insufficient funding and lack of technical expertise to delays in the court process, usually caused by granting of frivolous orders on stay of proceedings and other unnecessary adjournments. See M. M. Akanbi, "Overview of the mandate, mission and procedures of the ICPC, and the journey so far", paper presented at a workshop on economic and financial crimes, organized by the Africa Diaspora Initiative in conjunction with the Faculty of Law, Ahmadu Bello University, held in Kaduna, Nigeria, 2-3 December, 2003.

⁷ The reports of most of these panels were not made public nor have their recommendations been

fully implemented in order to show a difference between these and other such panels that were established in the past.

- ⁸ A retreat was held for public office holders at the National Institute for Policy and Strategic Studies (NIPSS), Kuru, following which a declaration, which resembled a handbook or guiding principles for transparency and accountability, was adopted. It is reportedly being complied with.
- ⁹ The present report on the integrity and capacity of the justice system provides both a planning and monitoring tool in the context of this programme.
- ¹⁰ This policy is aimed at reducing the cost of governance and has the potential to achieve the desired results if carefully implemented. However, there is strong cynicism regarding the implementation and success of this policy. In an interview with the *Daily Trust* in September 2003, the Chairman of the national Revenue Mobilization, Allocation and Fiscal Commission expressed similar reservations.
- ¹¹ The report of the meeting is available on the website of UNODC (www.unodc.org).
- ¹² Previous studies on corruption in Nigeria include Femi Odekunle, ed., *Nigeria: corruption in development* (Ibadan, University of Ibadan Press, 1982); and Ibrahim Lame and Femi Odekunle, *Fighting corruption and organized crime: challenges for the new millennium* (Ibadan, Spectrum, 2001). On law and order, the most empirical study to date is the report of a special study group on law and order commissioned by the Presidency (Lagos, Federal Government Printers, 1985). Mention should also be made of a technical report on the Nigerian court procedures project published by the Nigerian Institute of Advanced Legal Studies and containing proposals for the reform of the High Court of Lagos State civil procedure rules.
- ¹³ The indices were compiled as an average of selected variables, each converted on a scale of 1 to 10; thus the indices are also on a scale of 1 to 10. It was decided to give a negative value to the scores in the indices; hence the higher the score in the corruption experience index, the higher the level of corruption experienced by the respondent, the higher the score in the accessibility perception Index, the lower the accessibility of courts according to the respondent's perception, and so forth.
- ¹⁴ Both experience and perceptions are highly relevant for the purpose of gaining a deeper insight into the levels of justice delivery, as well as the linkages between causes and consequences. Perceptions could be influenced by various factors, many not related to the actual prevalence of shortcomings in the respective areas. For example, the perception of corrupt practices in the justice system may in some cases be caused by delays or incompetence or by a general feeling that all public servants are corrupt. Such findings would also be of great importance for the formulation of policy recommendations. On the other hand, actual experience may not always be truthfully reported. In particular, in the case of corruption, respondents may not feel comfortable admitting openly that they have bribed a judge or a member of the court staff or they may be reluctant to disparage their own institution or profession by reporting corruption among colleagues even if they are aware of it.

II. Baseline data

Any reform process must be developed bearing in mind the expected impact and must establish a baseline against which progress can be monitored. Generally, this will require the development of measurable objectives, performance criteria and impact indicators, which will be repeatedly assessed, first in order to provide a baseline and later in order to measure progress made in terms of achieving the reform objectives. Of utmost importance in this context is transparency and keeping the public informed of both the indicators forming the baseline and any progress or failure.

Baseline indicators will make reformers accountable to the public as the ultimate beneficiary of any reform. They provide a tool for all stakeholders to evaluate the actual impact of reform measures and to exercise pressure on those who fail to achieve the promised results. At the same time, impact-oriented progress review enables reformers to assess the validity of their action and to refine or readjust their plans for the future.

The first Federal Integrity Meeting for Nigerian Chief Judges decided that the judicial reform effort in Nigeria should focus on (a) improving access to justice; (b) enhancing quality and timeliness of justice delivery; (c) raising public confidence in the judicial process; (d) improving efficiency and effectiveness in responding to public complaints; and (e) strengthening coordination and cooperation across the criminal justice system.¹ For each of these measures, a set of indicators was identified that, according to the participating judges, would make it possible to ascertain if the measure had achieved its goal. These measures and related indicators became the main basis for the refinement of the comprehensive assessment methodology. In particular, the survey instruments for judges, lawyers and prosecutors, court users, court staff (both present and retired) and business people were reviewed with a particular focus aimed at covering all the impact indicators. By linking each specific measure directly to a set of indicators, it became possible to establish individual baselines; a necessary precondition for any truly meaningful monitoring exercise. The impact-oriented design of the assessment allowed for fine-tuning and adjustment of each measure and thus greatly contributed to the achievement of the overall objectives of the project.

Table 3 below provides an overview of the situation existing in the three pilot states in each of the areas of reform. The table presents data collected during the present research on baseline indices covering both perceptions and experience of all justice sector stakeholders, including judges, lawyers, prosecutors, business people, prisoners awaiting trial and other court users. Each index integrates a set of questions relating to the same reform area, using a scale of nought to 10, with nought corresponding to “excellent” and 10 corresponding to “terrible”.

Table 3
Overview of current situation in the judiciary

<i>Reform objective</i>	<i>Baseline indices for reform objectives</i>	<i>Questions used to compose baseline indices</i>	<i>Sample group questioned</i>	<i>Baseline indices (2001) on a scale of 0 (excellent) to 10 (terrible)</i>			
				<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>National average</i>
Strengthening access to justice	Accessibility perception index (covered by 12 questions)	Is your country's justice system affordable?	Judges, court users, business people	4.24	4.81	5.5	4.89
		Is the distant location of the courts the main obstacle to using them?	Judges, court users, business people				
		Is the high cost of the courts the main obstacle to using them?	Judges, court users, business people				
		Are high lawyer's fees the main obstacle to using the courts?	Judges, court users, business people				
Enhancing timeliness of justice	Accessibility experience index (covered by 3 questions)	How many times did you have to appear before the court (if the case is concluded)?	Court users	4.72	4.81	5.39	4.97
		How easy was it to report your case to the police?	Court users				
Enhancing timeliness of justice	Timeliness perception index (covered by 7 questions)	In general, is information on the laws and regulations affecting the business difficult of easy to obtain?	Business people				
		Is your country's justice system quick?	Judges, court users, business people	4.37	5.2	4.68	4.99
		Is the length of the trial the main obstacle to using the courts?	Judges, court users, business people				
Delivery	Timeliness experience index (covered by 5 questions)	Is the time required to dispose of a case too long or appropriate?	Judges				
		How long did it take to solve your dispute?	Judges, court users, business people	4.29	6.23	5.16	4.96
Enhancing quality of justice delivery	Quality perception index (covered by 7 questions)	Were you aware of undue delay at any stage of the court proceedings?	Judges, lawyers				
		Please evaluate the services provided by judges, prosecutors, public attorneys, private attorneys, court clerks, police, enforcement personnel and prisons personnel?	Judges, court users, business people	4.96	4.6	5.23	5.06

<i>Reform objective</i>	<i>Baseline indices for reform objectives</i>	<i>Questions used to compose baseline indices</i>	<i>Sample group questioned</i>	<i>Baseline indices (2001) on a scale of 0 (excellent) to 10 (terrible)</i>			
				<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>National average</i>
		How would you evaluate the importance of meritocracy and/or length of service in determining how specific staff are treated, including who gets hired, highest remuneration and best training opportunities?	Judges				
		Do you consider the judges to be competent?	Judges, court users, business people				
	Quality experience index (covered by 8 questions)	Was the perpetrator of the crime arrested? If yes, how long did it take?	Court users, business people	5.03	5.17	4.98	4.95
		In general, are laws and regulations affecting your business and their interpretation consistent or inconsistent?	Business people				
		How frequently is your court inspected?	Judges				
		What areas does the inspection cover?	Judges				
		How frequently is your performance evaluated in writing?	Judges				
		How difficult is it to obtain information from the recordings?	Judges				
		In general, how ineffective or effective is the record-keeping at your organization?	Judges				
		Is your country's justice system transparent?	Judges, court users, business people	5.33	4.44	5.04	4.95
Improving effectiveness, efficiency and credibility of the complaints system	Corruption perception index (covered by 6 questions)	Are excessive unofficial payment to judges and the courts the main obstacle to using the courts?	Judges, court users, business people				
	Corruption experience index (covered by 10 questions)	Are you aware of anyone being asked to pay unofficial money to judges, lawyers, court staff or	Judges, court users, lawyers	4.17	4.73	5.67	4.96

<i>Reform objective</i>	<i>Baseline indices for reform objectives</i>	<i>Questions used to compose baseline indices</i>	<i>Sample group questioned</i>	<i>Baseline indices (2001) on a scale of 0 (excellent) to 10 (terrible)</i>				
				<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>National average</i>	
Enhancing public trust	Public trust index (covered by 10 questions)	police?	Court users	5.12	4.74	5.12	5	
		Have you or another person on your behalf made any unofficial payment in connection with this case to judges, lawyers, court staff or police?						
		On how many occasions have you made such payments?						
		Would you attribute any delays you experienced to corruption?						
		Did you try to solve the dispute leading to this case unofficially?						
		Did you receive indication of a need to pay the police in order for them to investigate?						
		Are you confident that the country's justice system is able to defend you from crime?						Judges, court users, business people
		Are you confident that the country's justice system is able to uphold your civil rights?						Judges, court users, business people
		Do you think your country's justice system effectively and efficiently supports the private sector?						Judges, business people
		Has your firm ever had a complaint against any government agency, including, for example, the tax office, the public health service or customs? If so, did you litigate the Government before the court?						Court users, business people
Independence index (covered by 17 questions)	Do you think political pressure dominate the justice system?	Judges, court users, business people, lawyers	5.07	4.78	5.53	5.19		
		Do you think the executive branch of the Government dominates the courts?	Judges, court users, business people, lawyers					
		How would you evaluate the						

<i>Reform objective</i>	<i>Baseline indices for reform objectives</i>	<i>Questions used to compose baseline indices</i>	<i>Sample group questioned</i>	<i>Baseline indices (2001) on a scale of 0 (excellent) to 10 (terrible)</i>		
				<i>Borno</i>	<i>Delta</i>	<i>Lagos average</i>
		importance of political connections or lack thereof in your organization? How important are personal connections in determining how specific staff are treated including who gets hired, highest remuneration and best training opportunities? Do you think the judiciary works only for the rich and the powerful? Is your country's justice system fair and impartial?	Judges, court users, business people, lawyers Court users, business people Judges, court users, business people			

Note: No self-contained index was developed for the reform objective of “improving coordination within the criminal justice system”.

Notes

¹ The last objective was added by the first state integrity meeting for the Lagos state judiciary and confirmed by similar meetings held in Borno, Delta and Katsina states.

III. Data analysis

In the following section, the present report seeks to establish the relative weight of the factors identified in the descriptive part of the assessment in terms of their potential to hamper the functioning of the justice system in the three states and explores the relationships between causes and consequences of the individual factors. The objective of the data analysis is to identify policy options and facilitate decision-making aimed at determining priority measures for judicial reform. For the purpose of the analysis, the single indicators have been integrated into perception and experience indices of accessibility; judicial independence; timeliness and quality of justice delivery; corruption of the justice system; and public trust in the justice system.

The analysis revealed that perceptions and experiences were interrelated in most cases, which suggests that opinions concerning the justice system are normally based on actual experience or first-hand knowledge of such experience. It also became evident that the final resolution of the case or judgement did not seem to have influenced the perceptions of the respondents. Only with regard to judicial independence did perceptions vary significantly according to whether the respondent had won or lost the case.

Significant differences were found regarding the experience and perceptions of respondents with different socio-economic and demographic characteristics. In particular, the less privileged, both in terms of monetary resources and educational background, as well as ethnic minorities, tended to have worse experience and perceptions of the justice system. Gender did not seem to influence the experience of respondents of the justice system, although the majority of the respondents were male so this finding should be evaluated with caution.

In particular, the poor and ethnic minorities encountered significant obstacles in accessing justice.¹ This is especially the case in Delta state. Other factors, such as education and gender, were not directly related to accessibility. In addition, the poor and uneducated were more likely to experience delays in justice delivery. To a lesser degree, this seemed to be true also for ethnic minorities, while the gender of the respondents did not influence their experience or perceptions of the timeliness of justice delivery. The socio-economic and demographic characteristics of the respondents also significantly affected their perceptions and experience of the quality of the courts. In particular, women, the poor and ethnic minorities experienced and perceived a lower quality of justice delivery. Moreover, it emerged that ethnic minorities and the poor tended to have less trust in the judiciary. As far as the perception of judicial independence was concerned, again the less privileged, both in monetary and educational terms, were more likely to perceive the judiciary as biased. Also, the poor and ethnic minorities seemed more likely to suffer from corruption. While this could be observed in all three states, it was particularly evident in Delta state. Gender on the other hand did not appear to be significantly related to the levels of experienced or perceived corruption.

Focusing on the private sector, it was also possible to identify some significant differences in terms of company size, the business sector and capital investment. In particular, it was verified that companies with low levels of capital had greater difficulties in accessing the courts as compared with larger ones and they tended to experience worse services from the courts. The size of the company seemed also to

influence its likelihood to be confronted with corruption in the courts. Findings from Lagos state showed that the smaller the company, the more likely it was to perceive the judicial system as corrupt and, as a consequence, to display a lower level of trust.

Finding 1

Grass-roots economic development seems to be especially favourably influenced by reform measures that aim at enhancing access to justice, improve the quality and timeliness of justice delivery and curb corruption in the justice sector.

It also emerged that companies with foreign capital investment generally perceived the country's justice system as less accessible than domestic businesses and were also far more likely to experience corruption in the courts.

Finding 2

Foreign capital investment could particularly benefit from enhanced access to justice and reduced levels of corruption.

When differentiating according to the business sector, commerce emerged as the sector most vulnerable to corruption, followed by the mining, quarrying, agricultural and financial sectors. As far as the case-type is concerned, cases related to construction were most corruption-prone, followed by labour-related cases and, then, tort-related cases.

A. Analysis

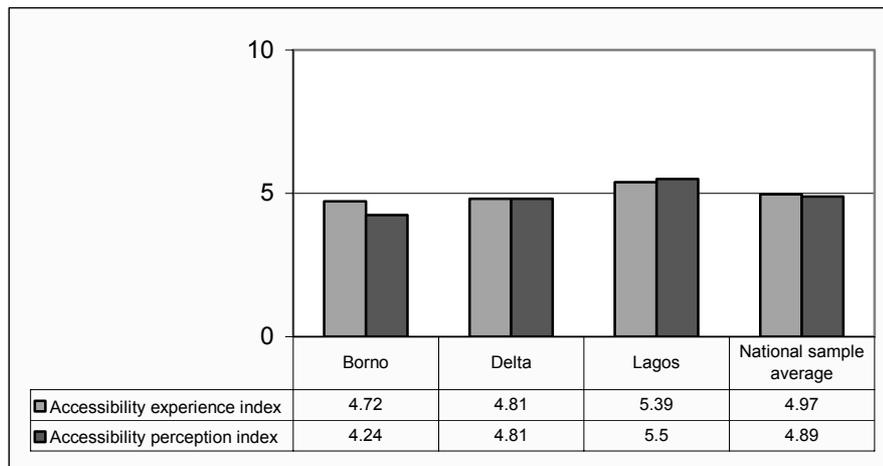
1. Access to justice

The accessibility experience index was developed drawing on questions relating to experience, in particular of court users and business people, when seeking access to justice.² This included such factors as the number of times court users had been asked to come to court before the case was concluded and how difficult it was to report a crime or to find information on the court case they were involved in.

In addition, an accessibility perception index was created. This was of particular relevance since the decision to seek access to the court system will often be determined by the perception of accessibility rather than by prior experience. The accessibility perception index was composed of questions relating to perceptions of the general affordability of the justice system, the complexity of the procedures and whether the costs in terms of court or lawyer fees was too expensive.

In a cross-state comparison, it emerged that it was more difficult to seek access to justice institutions in Lagos state, while Borno and Delta states scored better, in terms of both experienced and perceived accessibility (see figure 1).

Figure 1
Access to justice, measured on a scale of 0 (high) to 10 (low)



Comparing the single components of the two indices, it could be verified that the overall experience with accessibility was most negatively influenced by difficulties in reporting to the police and finding information on the laws and regulations and the consistency of laws and regulations and their interpretation. This suggested that, by streamlining the legal framework and its interpretation as well as by establishing and enforcing clear rules for reporting of crimes to and obtaining information from the police, the legislature could improve the overall accessibility of the justice system.

Finding 3

Streamlining the legal framework and its interpretation and establishing and enforcing clear rules for reporting of crimes to and obtaining information from the police, will improve the overall accessibility of the justice system.

In order to establish linkages between causes and consequences, both the accessibility experience index and the accessibility perception index were correlated with the indices for quality and timeliness; independence; public trust; and corruption.³ The graphs below show the relative intensity of these relationships. The strongest link existed between the perception of accessibility and that of independence (see figure 2), while the experience of accessibility was mainly related to the experienced quality of justice delivery (see figure 3).

Figure 2
Perceptions of accessibility

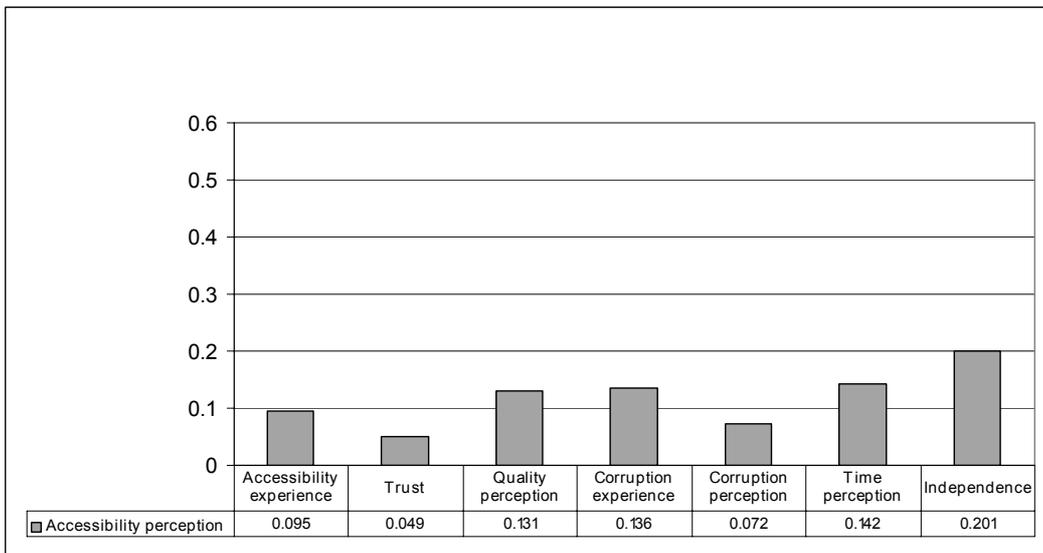
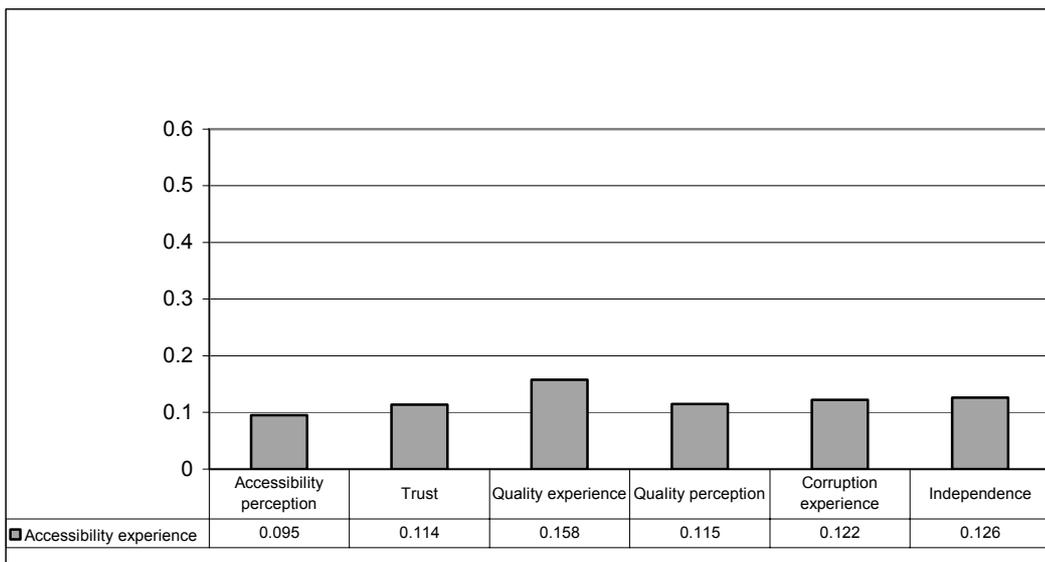


Figure 3
Experience of accessibility



When further exploring these links, the following findings emerged. The most negative perception of accessibility of the justice system was shared by those court users who had needed to come to court more often in order to resolve their cases.⁴ Only in Borno state were court and lawyer fees considered equally detrimental to the accessibility of the justice system. This finding suggests that difficulties in accessing the justice system stem rather from the inefficiencies of the system than

from court or lawyer fees. This was further confirmed by the fact that Borno state, regardless of its court fees were perceived as being too high, was found to provide the best access to justice, when compared with Lagos and Delta states.

Finding 4

Access to justice could be significantly enhanced by reducing the number of adjournments and the time required to resolve the case, while the reduction of court fees is unlikely to have a similar impact.

This lack of accessibility to the courts inevitably affects the trust and confidence of the people in the ability of the judiciary to assume fully its rightful institutional role as an embodiment of integrity and justice. Both the perception and the experience indices were also correlated to the public trust index. For court users, the more often they had to return to the court for the same case and the more difficulties they experienced when reporting to the police, resulted in less trust in the ability of the justice system to curb crime or defend their rights. The main consequence of the lack of access to justice was that court users and business people preferred to use other, not always licit, ways to solve their disputes.

Finding 5

Court users who had more negative perceptions and experience when it came to seeking access to justice, were more likely not to use the courts when needed.

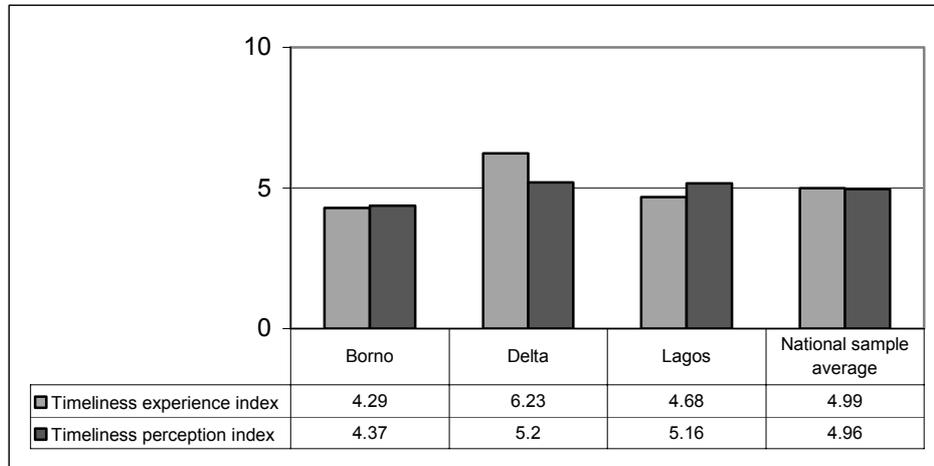
2. Timeliness⁵

The timeliness experience index considered the actual time the disposition of the case took and experience of undue delays during specific procedural steps.

The timeliness perception index was compiled taking into account the opinions of court users, business people, judges and lawyers on the country's justice system being quick and whether they felt that the time required to dispose of a case was too long or appropriate. The index also included the answers to the question of whether the length of the trial was among the most serious problems of the country's justice system when compared with other factors hampering justice delivery.

When reviewing perceptions and experience of timeliness across the three states, it emerged that, while in Lagos state the justice system was perceived as the slowest among the three states, Delta state scored worse as far as actual experience was concerned.

Figure 4
Timeliness of the courts, measured on a scale of 0 (few delays) to 10 (frequent delays)



The strongest correlations could be established between the timeliness experience index and experience with corruption, as well as with judicial independence, while the timeliness perception index was mainly correlated to the quality experience index and the trust index.

Figure 5
Timeliness perception

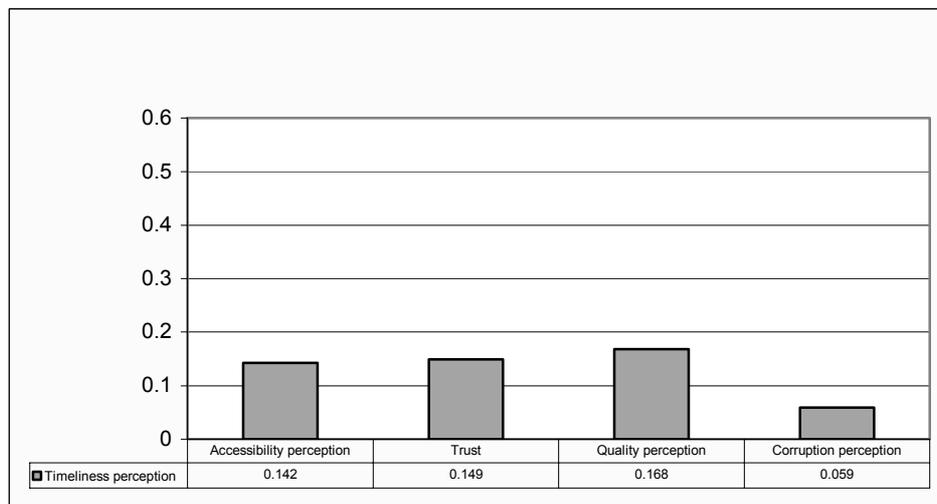
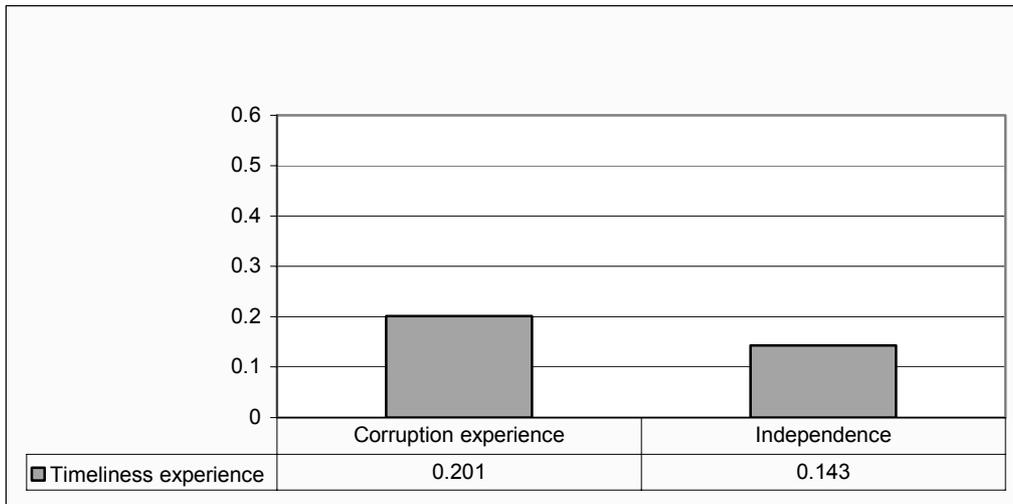


Figure 6
Timeliness experience



The robust correlation between timeliness and the level of judicial independence implies that less independent courts are also more likely to be slow and inefficient. It can therefore be assumed, as has been highlighted by previous studies,⁶ that enhanced judicial independence will not only increase the credibility, fairness and impartiality of the judiciary, but also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner.

Finding 6

Enhanced judicial independence will not only increase the credibility, fairness and impartiality of the judiciary, but will also improve the overall efficiency of the courts in handling their caseloads in a timely and efficient manner.

The analysis further showed a strong correlation between the timeliness perception index and the public trust index, indicating that confidence in the justice system will not improve significantly unless the justice system is rendered more efficient.

In addition, it also emerged that lack of timeliness reduced willingness to use the courts in order to resolve disputes. This was especially true in those cases which involve the Government as a respondent. In that context, it became clear that business people who experienced more delays were by far less likely to use the formal court system in the future and openly admitted to preferring to resolve their disputes informally, not necessarily by licit means.

Finding 7

Inefficient courts are likely to encourage citizens not to seek solutions in accordance with the law but to resort to other, often illicit, means including corruption.

3. Quality

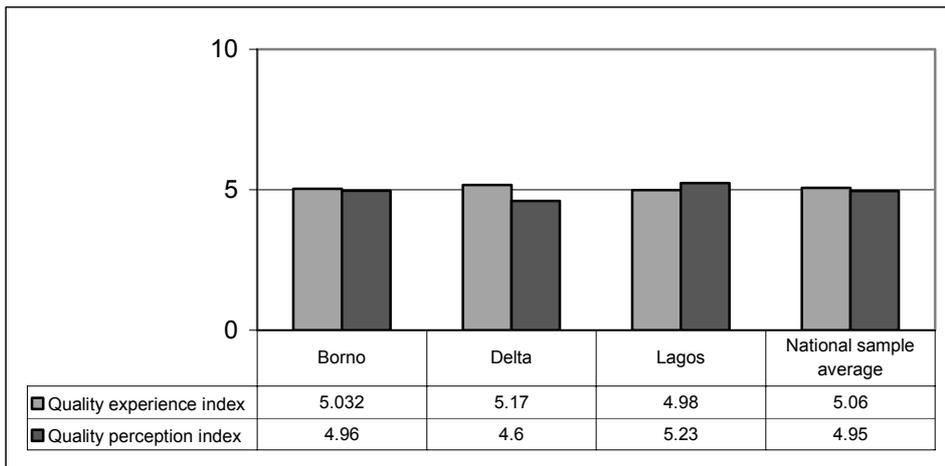
The quality experience index included indicators relating to the capacity of the justice system to establish the rule of law in terms of the reliability of the enforcement of judgements and the arrest of the perpetrator of the crime. In addition, it comprised all questions relating to the consistency of laws and regulations and their interpretation, as well as the difficulties encountered when retrieving information from court records. Other factors that were included in the quality experience index were the frequency of performance evaluations and of inspections of judicial officers as well as the areas covered by those inspections.

The variables considered for the quality perception index were the evaluation of the services provided by the various actors within the justice system, including judges, prosecutors, public and private attorneys, court clerks, the police, enforcement officers and prison personnel. The perceptions of the competence of the judges were also included, as was the importance of merit and of the length of service in hiring and career development in the judiciary.

While the perceived quality of the justice system was rated the lowest in Lagos state, Delta state scored worse than Lagos and Borno states as far as experience was concerned.

Figure 7

Quality of the services provided by the courts, measured on a scale of 0 (high) to 10 (low)



When correlating both quality indices (experience and perception) with the other indices, the strongest relationships could be established between the quality perception index on the one hand and trust, judicial independence and perceived and experienced corruption on the other. The quality experience index turned out to be mainly correlated to perceived quality and access to justice.

Figure 8
Quality perception

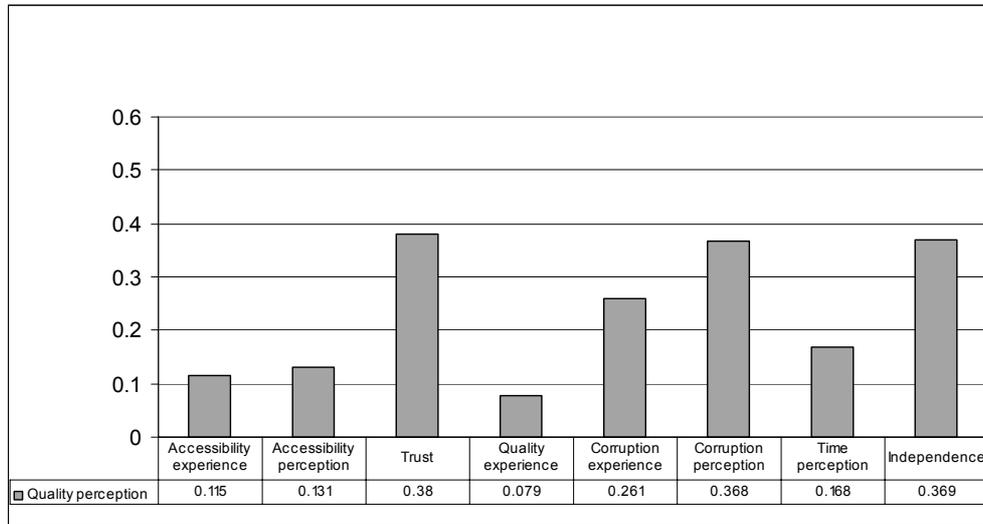
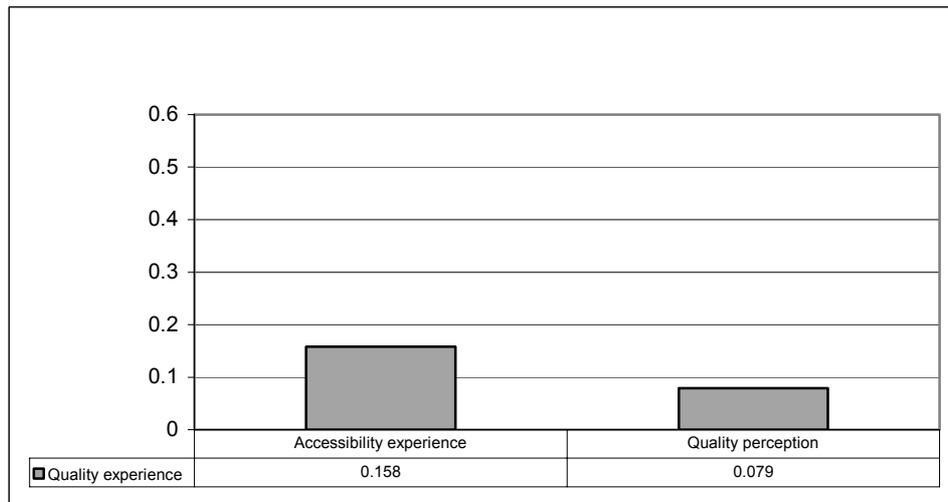


Figure 9
Quality experience



The strong correlation between the perceived quality of the justice system and perceptions of judicial independence were easily explained when exploring the links among the separate factors compiling the indices. It emerged that political influence in the hiring and promotion of judicial officers, prosecutors and court staff was strongly linked to the perceived quality of justice delivery. Hence, improving the quality of justice delivery (for example through enhanced training) will not automatically improve the quality of the justice system in the eyes of the public, unless a merit-based and transparent hiring and promotion system has been put into place.

Finding 8

Both the perceptions and experience of the quality of justice delivery can be improved by reducing the importance of political connections and enhancing meritocracy in recruitment, hiring, retention, promotion, retirement and the overall management of staff.⁷

Further negative opinions on the quality of justice delivery seemed to be linked closely to the components of the public trust index, in particular the ability of the justice sector institutions to defend an individual against crime and uphold the rule of law. It is important to note that those components of the quality experience index which related closely to public trust, such as experience in terms of the arrest of the perpetrator of a crime or the enforcement of a court decision, were also strongly correlated with the perception quality index.

Hence, while it appeared that there was a need for a large variety of measures to improve the quality of justice delivery, such as training, human resources management, enhanced meritocracy and improvements in the legal framework, there were some key measures linked to the basic security concerns of citizens and the prevalence of the rule of law that would, more than any other factor, be the benchmark for the public's opinion of and trust in the justice system.

Some specific proposals for improvement emerged when analysing the experience of judges concerning the quality of justice delivery. Here it became evident that the more specialized the judges were, the better their experience in terms of quality of the justice system.

Finding 9

Increased specialization of judges will lead to enhanced quality of justice delivery.

Furthermore, the judges' perception of quality was inversely correlated to the number of support staff at their disposal, meaning the more support staff they had, the lower their perception of the quality of services delivered. Hence, improving quality does not require increasing the number of court staff, but making them more productive.

Finding 10

Improving the quality of justice does not necessarily require an increase in the number of court staff, but rather increasing professionalism.

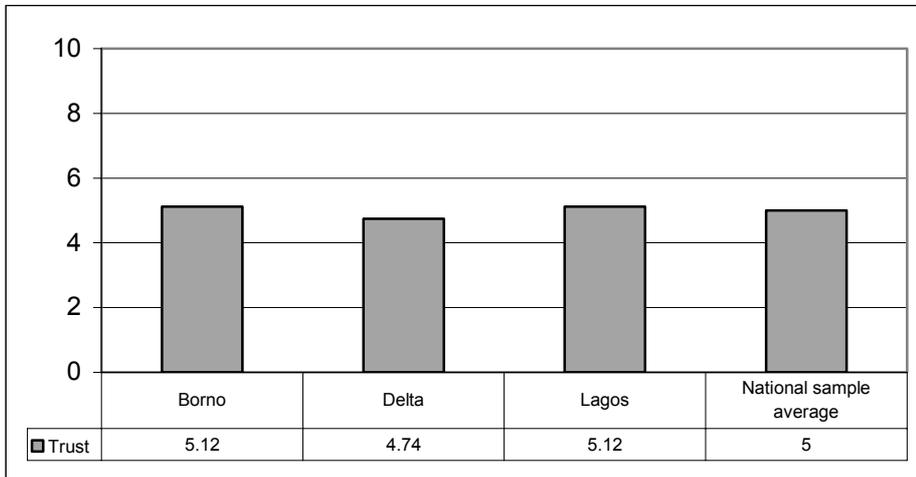
4. Public trust

The nature of the public trust index did not allow for a distinction to be made between experience- and perception-related data. The variables used for the index were the perception of the ability of the country's justice system to uphold civil rights, to defend from crime and to support a modern economy. As far as experience-related data was concerned, the index considered as a sign of public trust

in the justice system whether the court users or business people litigated against the Government in the courts. A cross-state analysis of the responses showed that trust in the judiciary was higher in Delta state compared to the other two states.

Figure 10

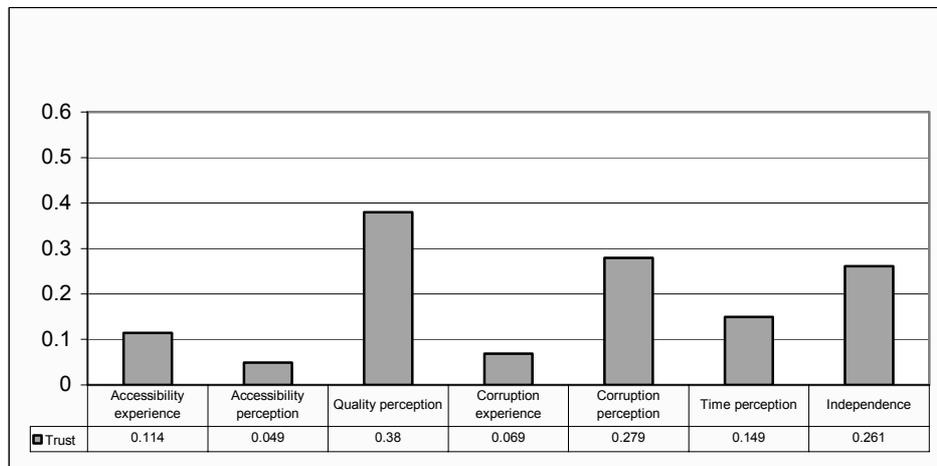
Public trust in the judiciary, measured on a scale of 0 (high) to 10 (low)



When exploring the correlations to all other indices, the perceptions of quality, independence and corruption were the most strongly correlated with public trust.

Figure 11

Public trust



The trust level did not, however, seem to be determined by the same factors for all categories of respondents. While the opinions of judges appeared mainly to be affected by their experience with corruption in the courts, for business people it was predominantly determined by the timeliness of justice delivery or the lack thereof.

As seen above, public trust was primarily linked to basic security concerns of citizens and the prevalence of the rule of law, a factor which appeared mainly to be

influenced by the ability of the system to uphold citizens' rights, to protect the individual against crime and to enforce of judicial decisions reliably.

Finding 11

Public trust in the criminal justice system is primarily linked to the basic security concerns of citizens and the prevalence of the rule of law. The main consequence of a low level of public trust in the courts is the declining willingness of citizens to use the courts.

5. Independence, fairness and impartiality

All factors relating to the independence, fairness and impartiality of the courts were integrated into the independence index. This included questions relating to the level of political pressure on the judiciary and the control exercised by the executive over the courts, as well as general perceptions of the level of fairness and impartiality of the courts. As far as merit-based career development was concerned, the index considered whether hiring or promotion of judicial officers was determined or influenced by personal or political connections, or by the social status of the officer concerned.

A cross-state analysis showed that Lagos state appeared to be the state where the judiciary was perceived as less independent and impartial as compared to Delta and Borno states (see figure 12). Judges had a fairly positive opinion of their independence, while lawyers were the most critical (see figure 13).

Figure 12

Independence, fairness and impartiality of the judiciary by state, measured on a scale of 0 (high) to 10 (low)

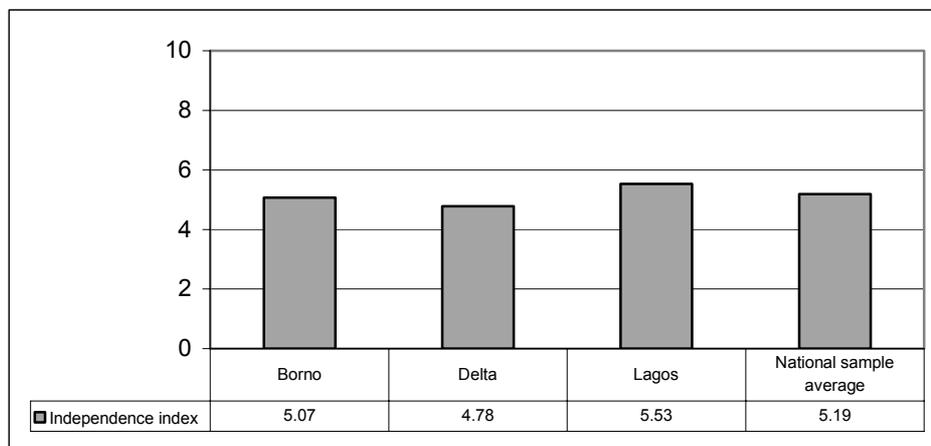
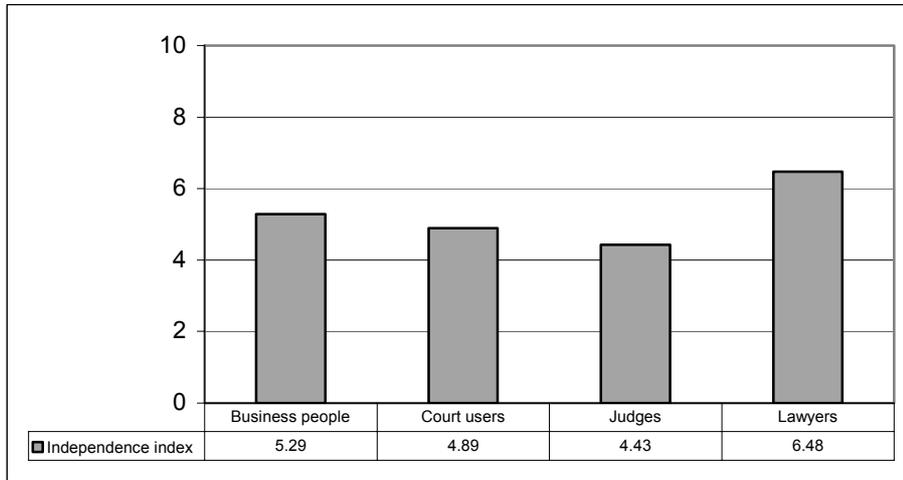
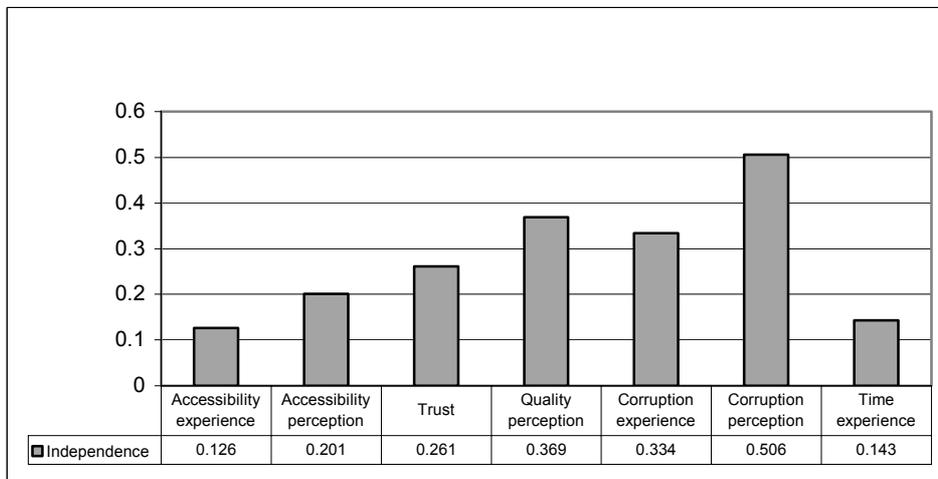


Figure 13
Independence, fairness and impartiality of the judiciary, by respondent, measured on a scale of 0 (high) to 10 (low)



The independence index emerged as most strongly correlated to the corruption and quality perception indices, followed by the corruption experience index, the trust index, the accessibility perception and experience indices and the timeliness experience index (see figure 14).⁸

Figure 14
Independence



Lack of independence was found to be strongly linked to corruption. A judicial system influenced by politics or other factors was found to be constantly undermined in terms of its integrity and to lose its ability to curb corruption, both within its own ranks and outside in the public and private sector. This finding suggests that curbing corruption requires a strong and independent judiciary.

Finding 12

Lack of judicial independence is strongly linked to corruption; curbing corruption requires a strong and independent judiciary.

Moreover, lack of independence was found to hamper access to justice. Both court users and business people who perceived the judiciary as lacking independence also shared a considerably less positive assessment of the accessibility of the courts. There is a danger that citizens will increasingly try to leverage their connections and to use their influence to access or derive services that ideally should be available for everyone. It seems therefore that rendering the judiciary more accessible to its users may also create an environment conducive to reducing the influence of political and non-political connections within the judicial domain.

Finding 13

Enhancing access to justice will also strengthen judicial independence.

Furthermore, it is crucial to note that the perceptions of judicial independence were more positive in those courts where there was a higher frequency of inspections and frequency of performance evaluation in writing. Thus, the more frequent and thorough the performance evaluations, the less likely that preferential treatment will be given to judicial officers and court staff because of special connections.

Finding 14

The perception of judicial independence was more positive in courts with a higher frequency of inspections and frequency of performance evaluation in writing.

6. Corruption⁹

The corruption experience index was composed of indicators relating to the experience of the various categories of respondents with unofficial payments to judges, lawyers, court staff and police, and to the frequency of payments made with the purpose of obtaining a favourable judgement, the number of illegal payments made during the previous year and episodes of delays caused by corruption or, more generally, the use of informal paths for a positive outcome of the dispute.

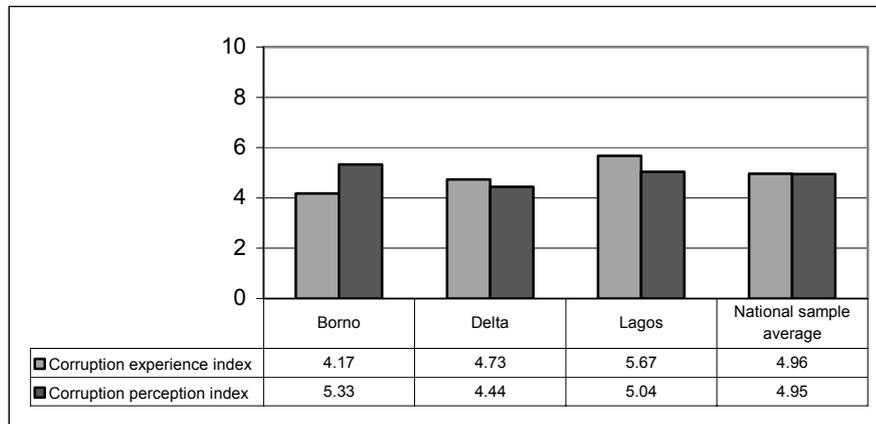
The corruption perception index included the responses of the various stakeholders to questions concerning the levels of corruption in the courts. The index also included the findings from questions asking respondents to rate corruption as one of the factors hampering justice delivery in comparison with other shortcomings and their effect on justice delivery.

From a cross-state comparison of the corruption perception and the corruption experience indices, Lagos state emerged as the state where corruption in the justice system seemed most prevalent. When correlating the two indices, it emerged that high levels of perceived corruption corresponded to frequent experience with corrupt practices in the justice system. However, there were also a significant

number of cases where high levels of perception could not be explained by an equally high level of experience. This suggests that, while generally speaking experience and perceptions are consistent, perceptions of corruption are not exclusively based on actual experience.

Figure 15

Corruption in the courts, measured on a scale of 0 (low) to 10 (high)



A thorough analysis of both the corruption experience index and the corruption perception index revealed that lawyers and business people, compared to court users, were more likely to experience corruption and to perceive the courts as corrupt. There could be various reasons for these differences, for example lawyers and business people may be more likely to bribe judicial officers and court staff on their own initiative or to respond to requests for bribes because they know that this is the only way to get things done. It is also possible that court users, owing to a lack of knowledge, are often defrauded by court staff requesting payments for services that should be free of charge, rather than asking for a bribe. This suggests that raising the awareness of court users concerning filing fees and other court-related costs for each case type may constitute a valid measure to reduce the opportunities of court staff to request fraudulently inexistent “fees”.

Figure 16

Experience of corruption in the courts, by respondent, measured on a scale of 0 (low) to 10 (high)

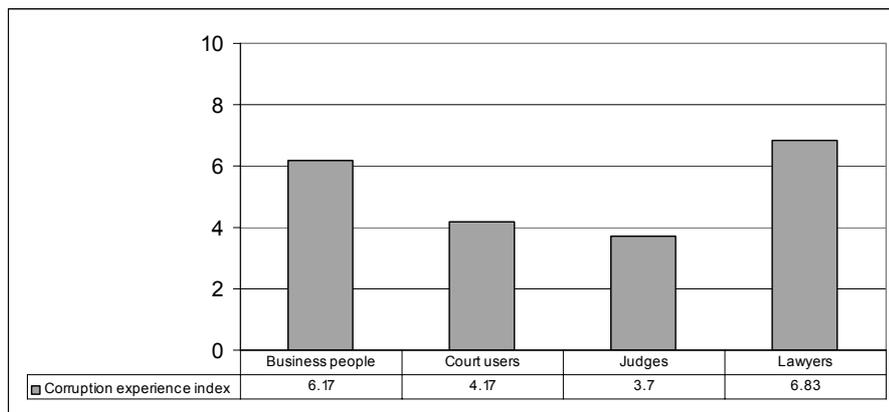
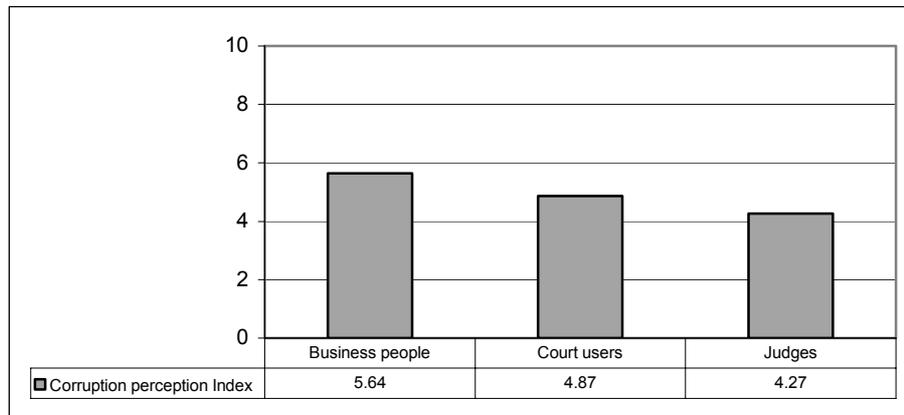


Figure 17

Perception of corruption in the courts, by respondent, measured on a scale of 0 (low) to 10 (high)



A further analysis of the above figures revealed that the lawyers' perceptions of corruption, among others, were dependent on whether they had worked as a corporate counsel. This calls for more intense monitoring of commercial cases. At the same time the finding suggests that business people should be made aware of how and to whom they should submit complaints when asked for a bribe and should be warned of the consequences if they bribe a court official. The introduction of criminal liability of legal persons also seems a viable policy option.

Finding 15

Lawyers and business people, compared to court users, are more likely to experience corruption and to perceive the courts as corrupt.

When comparing the corruption perception index and the corruption experience index with all the other indices considered in the present assessment, both related strongly to judicial independence and the perception of quality, while the correlations with the other indices were weaker.⁸

Figure 18

Corruption perception

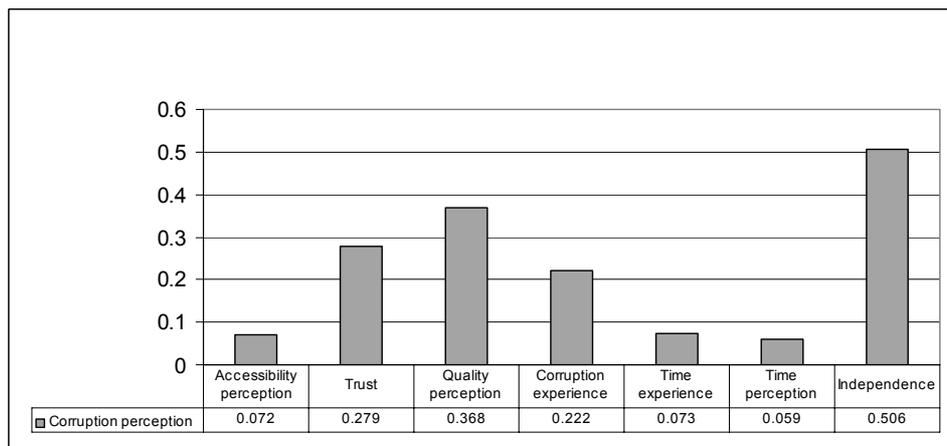
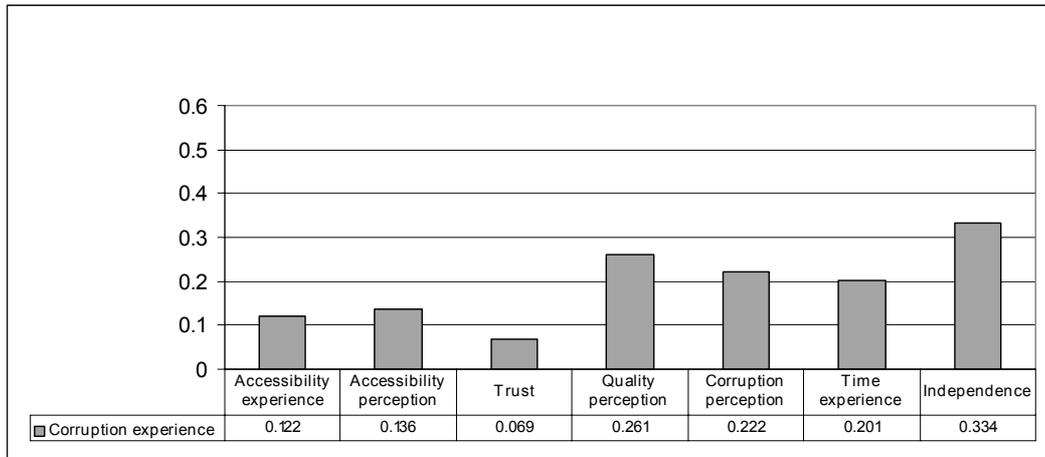


Figure 19
Corruption experience



The corruption experience index also emerged as linked to the timeliness experience index, confirming the strong relation between delays and corruption.¹⁰ Delays are a compelling incentive for court users to accelerate the procedure by paying bribes. Delays are often in fact an implicit request for a bribe in exchange for an unanticipated service. This suggests that the likelihood of incidents of corruption depends directly on the overall duration of the case.

Moreover, it was possible to link the corruption perception index not only to timeliness but also to specific procedural steps. In particular, the payment of bribes occurred in connection with applications for bail, institution of proceedings, issuing of summons to the defendant, interrogatories, delivery of judgements and obtaining certified copies of proceedings.

It was also possible to establish a correlation between the corruption experience index and the accessibility experience index. Again, people who had to return to court several times for the same case were the ones that were asked to pay bribes more frequently. It therefore seems safe to assume that any measure to speed up the trial in general and reduce the number of adjournments in particular, will not only assist in increasing the timeliness of justice delivery, but also reduce the opportunities for corrupt practices in the courts and enhance access to justice.

Finding 16

There is a strong linkage between delays, corruption and access to justice or the lack thereof, which suggests that speeding up the trial in general and reducing the number of adjournments in particular will assist in:

- Increasing the timeliness of justice delivery
- Reducing the opportunities for corrupt practices in the courts, and
- Enhancing access to justice

It became evident, however, that the more difficult it was to report to the police, the more frequently bribes were paid to them. In other words, it appears that the police often discourage the reporting of crimes and remain inactive unless they receive a bribe. This makes it necessary for citizens to be educated about the duties of the police and complaint procedures in the case of violation of those duties.

Several studies have confirmed that judicial independence was one of the main guarantees of the capability of the judiciary in curbing crime and to prevent the spread of corruption. This finding was also confirmed by the present assessment through the strong correlation between the corruption experience index, the independence index and the trust index. Those court users who paid bribes to court staff or other officers in the justice sector more frequently were also more likely to perceive the judiciary as lacking independence and did not trust in its ability to defend their civil rights and to protect them from crime. It can be hypothesized at this stage that the loss of trust in the institution and the spread of corruption are part of a vicious cycle, both feeding on each other: the more corruption the less trust, the less trust the more prone people become to accept bribery as a given fact when dealing with the justice sector institutions.

Finding 17

The more corruption the less trust; the less trust the more people accept bribery as a given fact when dealing with justice sector institutions.

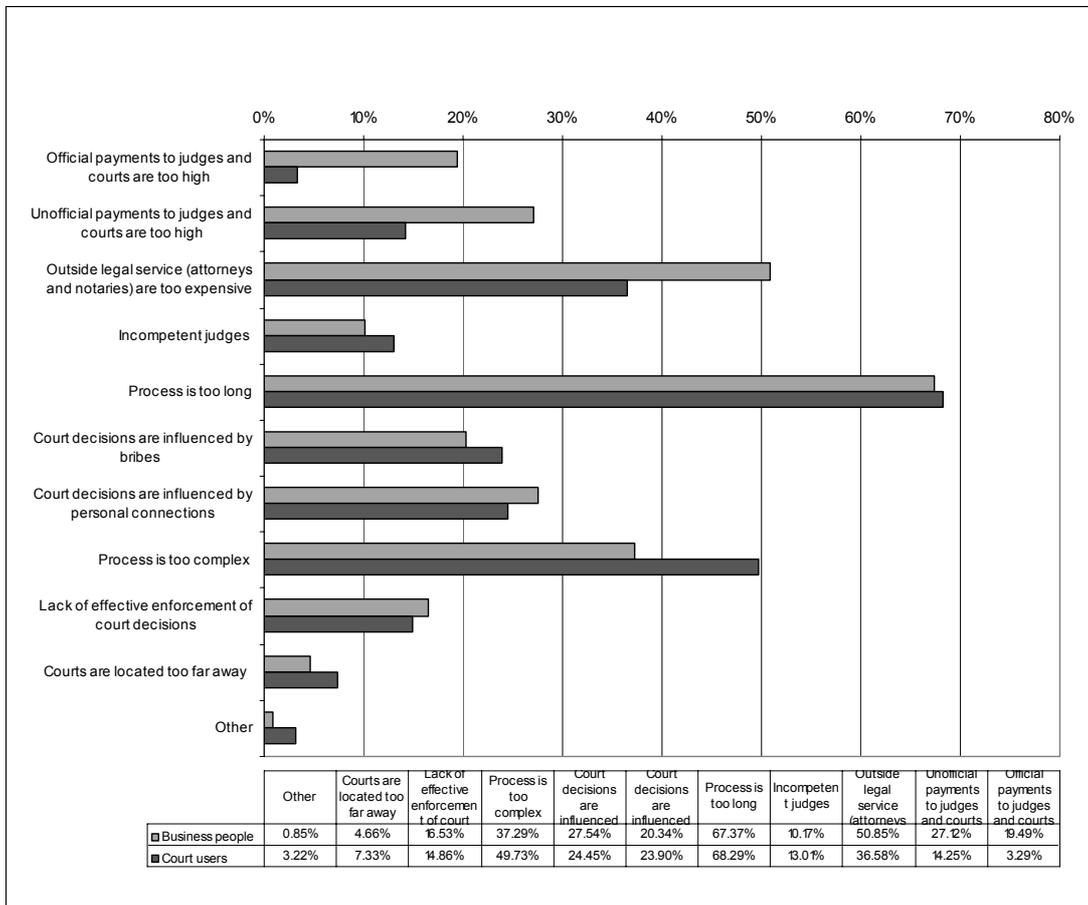
Furthermore, the relationship between sanctions for poor performance and unprofessional conduct and experiencing of corruption was explored. The statistics showed that lower levels of judicial corruption were experienced in those judicial domains where judges' performances were evaluated in writing more frequently and where guidelines, policies and regulations on personnel management were formalized in writing. This suggests that performance evaluation is an effective tool for strengthening overall discipline, accountability and transparency within the courts.

B. Main problems according to interviewees

When asked what, in their view, were the most significant obstacles to using the courts, court users and business people stressed in particular the length of the process, the financial means required to cover lawyer fees and the complexity of the process as the biggest obstacles (see figure 20).

Figure 20

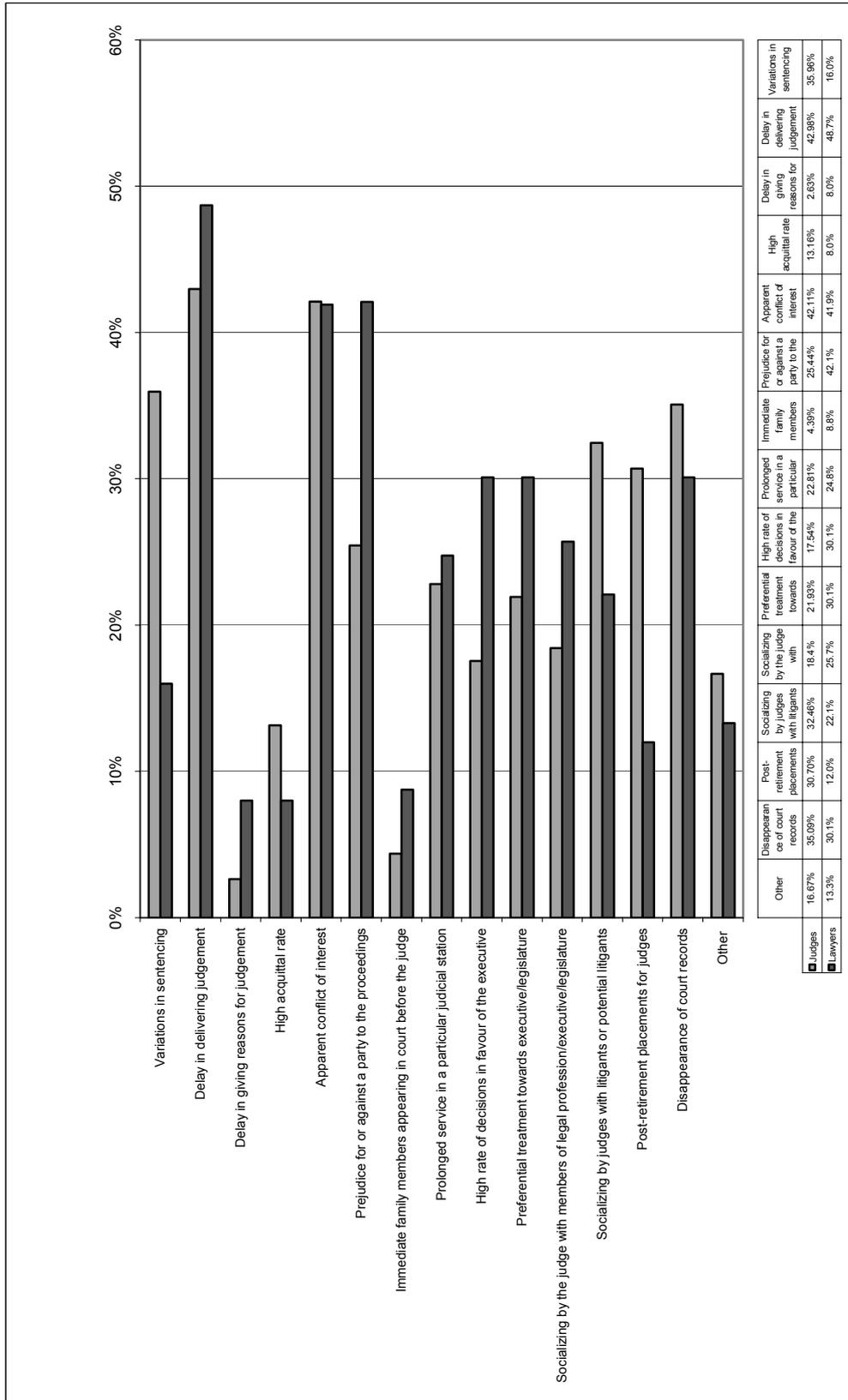
Question to court users and business people: What are the three most significant obstacles to using the courts? (multiple choice)



Judges and lawyers confirmed this assessment to some degree, identifying delays in the delivery of judgements as the most serious problem facing the justice system (43 per cent). However, when considering together the ratings of apparent conflict of interest (42 per cent), socializing with litigants or potential litigants (33 per cent) or other members of the legal profession, the executive or legislature (26 per cent), the preferential treatment of the executive and legislative branch (21 per cent), and the prejudice against a party (42 per cent), judges seemed to rate the various forms of the same phenomenon, that is the abuse of function, as the most serious problem of the justice system. Other shortcomings that were often related to corruption and that were mentioned by many of the respondents included the disappearance of court records (35 per cent) and variation in sentencing (38 per cent).

Lawyers considered timeliness an even bigger issue than did judges. Respondents felt that delays in delivering the judgement (48 per cent) was the most serious problem facing the system, followed by apparent conflict of interest (42 per cent) and prejudice against a party (42 per cent) (see figure 21).

Figure 21
Question to judges and lawyers: Which of the following problems would you regard as the most serious in the justice system?



Notes

- ¹ The “ethnic majority” variable has been calculated by considering the ethnic structure in each single state for each sample. The value every respondent has in this variable is the percentage of the respondent’s ethnic group in the state and sample.
- ² The cost of bureaucracy in general in Nigeria is one of the highest in the world, i.e., the cost of obtaining legal status to operate a firm as a share of per capita gross domestic product (GDP) in 1999, including all identifiable official expenses (fees, costs of procedures and forms, photocopies, fiscal stamps, legal and notary changes, etc.), was 257 per cent of GDP against 120 per cent for Senegal, 60 per cent for Zambia and 21 per cent for Ghana (Center for International Private Enterprise, Red Tape Ranking).
- ³ The strength of the linear relationship between the two phenomena was calculated using Pearson’s correlation coefficient.
- ⁴ While there was an obvious link between the number of hearings that respondents had to attend in order to resolve their cases and their perception of the accessibility of the justice system, no significant relationship was established between accessibility and the length of trial as such.
- ⁵ It is possible to compare the Nigerian judicial timeliness to an international benchmark of the duration of trials provided by the courts in several countries. The average duration, in calendar days, between the moment of service of process and the moment the judgement is issued is 126 days for Nigeria, against 120 for Cote d’Ivoire, 90 for Zambia, 60 for Senegal and 42 for Botswana, in the case of eviction of tenants. Simeon Djankov and others, *Courts: the Lex mundi project* (National Bureau of Economic Research, Cambridge, Massachusetts, 2002).
- ⁶ See Transparency International, Conference on Delays and Corruption in Indian Judicial System: Remedies, 18 and 19 December 1999, available at www.transparency.org.
- ⁷ According to a cross-national analysis of the levels of meritocracy in the public sectors, Nigeria scores lower than Cote d’Ivoire, Tunisia and Egypt and is followed only by the Dominican Republic and Kenya. Peter Evans and James E. Rauch, “Bureaucracy and growth: a cross-national analysis of the effects of ‘Weberian’ state structures on economic growth”, *American Sociological Review*, vol. 64, No. 5 (1999).
- ⁸ Using Pearson’s coefficient method of analysis.
- ⁹ According to different sources, Nigeria suffers from widespread corruption, in terms of both petty and grand corruption. Transparency International ranks Nigeria as the second most corrupted country in its corruptions perceptions index. Past studies focusing on the specifics of judicial corruption have ranked Nigeria in a middle position, doing better than Kenya and the United Republic of Tanzania, but worse than Botswana, Ghana and Senegal (Mikael Priks, see note 4 in chap. I above).
- ¹⁰ See Alberto Vannucci, *Corruption, Political Parties, and Political Protection* (Florence, European Institute-Robert Schuman Centre for Advanced Studies); Daniel Kaufmann and Shang-Jin Wei, *Does “Grease Money” Speed Up the Wheels of Commerce?* (Cambridge, Massachusetts, National Bureau of Economic Research, Working Paper No. 7093, 1999); and Stephen Knack and Philip Keefer, “Institutions and economic performance: cross-country tests using alternative institutional measures”, *Economics and Politics*, vol. 7, No. 3 (1995), pp. 207-227.

IV. Policy recommendations

The present section of the report will provide recommendations aimed at leveraging the capacity and integrity of the Nigerian judicial system.

The recommendations are based on:

- (a) Inputs from judges and lawyers interviewed as part of the assessment;
- (b) Inputs from the UNODC-sponsored international judicial group, at that time composed of the chief justices and senior judges of Bangladesh, India (State of Karnataka), Nepal, Nigeria, South Africa, Sri Lanka, Uganda and the United Republic of Tanzania;
- (c) The conclusions of the 36 chief judges participating in the first Federal Integrity Meeting for Nigerian Chief Judges;
- (d) The findings resulting directly from the analysis of the data collected as part of the present assessment.

A. Recommendations by judges and lawyers

When asked to indicate the first and second most effective measures to improve the judiciary (see figures 22 and 23), judges and lawyers stressed the need for more and better equipment (84 per cent), higher salaries (74 per cent), increased budgetary resources (66 per cent) and improved case management (70 per cent) as key measures to improve the current situation. They also highlighted the need for increased independence from other powers (64 per cent), both in terms of immunity from political influence and greater autonomy. Other measures included enhancing the consistency of laws and regulations (60 per cent) and better trained staff (59 per cent).

Lawyers emphasized the need to increase budgetary resources (56 per cent), to improve the capacity to detect corruption (51 per cent) and to increase independence from political influence (48 per cent). They also pointed out the need to enhance case management capacities (39 per cent).

Figure 22

Question to judges and lawyers: What would be the most effective measure for improving court performance?

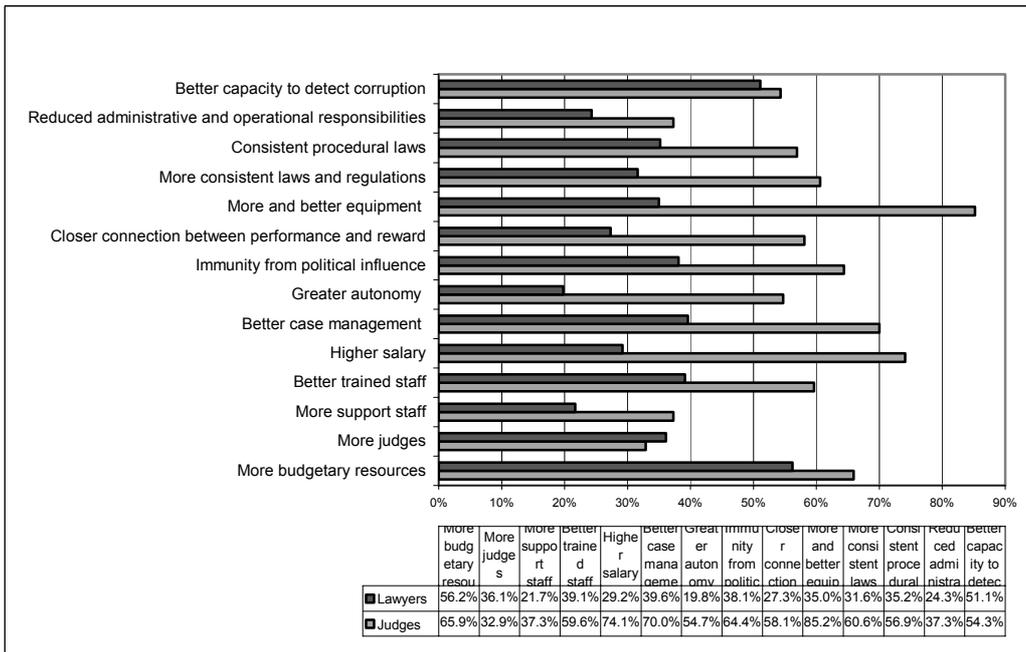
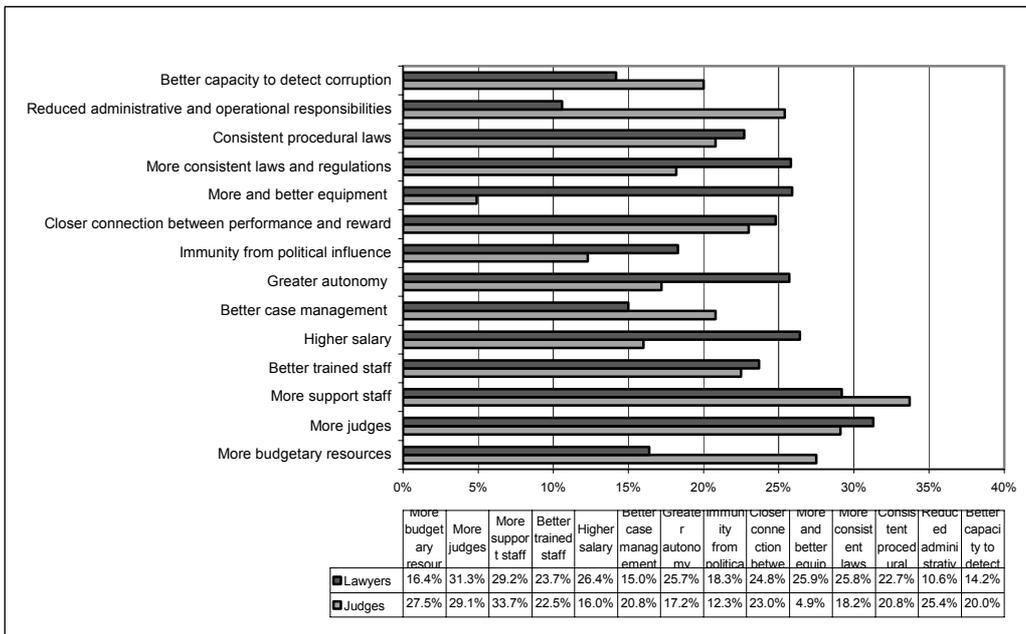


Figure 23

Question to judges and lawyers: What would be the second most effective measure for improving court performance?



When judges and lawyers were asked to suggest the second most effective measure to improve court performance, they recommended that there should be more support staff and more judges.

Other recommendations by judges included more budgetary resources (27 per cent), reducing the administrative and operational responsibilities (26 per cent), and enhancing meritocracy (23 per cent).

Lawyers recommended higher salaries (27 per cent), more and better equipment (26 per cent), greater autonomy (26 per cent), and more consistent laws and regulations (26 per cent).

B. Recommendations of the judicial leadership group

Under the framework of the UNODC Global Programme against Corruption and in conjunction with the Tenth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held in Vienna from 10 to 17 April 2000, UNODC, in collaboration with Transparency International, convened a two-day workshop in Vienna on 15 and 16 April 2000 for chief justices and other senior judges from eight Asian and African countries, including the Chief Justice of Nigeria. The purpose of the workshop was to consider ways to strengthen judicial institutions and procedures as part of strengthening national integrity systems in the participating countries and elsewhere. The suggestions of the workshop are set out below.

Addressing systemic causes of corruption

Data collection

1. There is a need for collection and national and international exchange of information concerning the extent and variety of forms of corruption within the judiciary. There is also a need to establish a mechanism to assemble and record such data and, in an appropriate format, make it widely available for research, analysis and response. In the context of the UNODC Global Programme against Corruption and initiatives for crime prevention, the establishment of an international database of this kind should be a high priority.

Remuneration

2. There is a need to increase the low salaries paid in many countries to judicial officers and court staff. Where it exists, there is a need to abolish the traditional system of paying “tips” to court staff for the filing of documents and to replace such salary supplements by conventional remuneration.

Monitoring

3. There is a need to establish in every jurisdiction an institution, independent of the judiciary itself, to receive, investigate and determine complaints of corruption allegedly involving judicial officers and court staff. Such an institution should include serving and past judges. It should possibly have a wider mandate and, where appropriate, be included in a body having a more general responsibility for appointments to the judiciary, judicial education and training and recommendation or decision for removal from office.

Judicial appointments

4. There is a need to institute more transparent procedures for judicial appointments to prevent the reality or perception of corruption in judicial appointments (including nepotism or politicization) and, in order to clear candidates for appointment, to examine in an appropriate way allegations or suspicion of past involvement in corruption.

Codes of conduct

5. There is a need to adopt judicial codes of conduct, to include instruction in such codes in the education of new judicial officers and to inform the public about the existence and content of such codes against which the conduct of judicial officers may be measured.

Adherence

6. There is a need to enhance requirements for newly appointed judicial officers to subscribe formally to a judicial code of conduct and to agree, in case of proved breach in a serious respect of the requirements of such a code, to resign from judicial or related office.

Delay

7. There is a need to adopt, in such a code and in practical administration, publicly available standards for the timely delivery of judicial decisions and appropriate mechanisms to ensure that such standards are observed.

Assignment

8. There is a need to adopt a transparent and publicly known (and possibly random) procedure for the assignment of cases to specific judicial officers to prevent the actuality or perception of litigant control over the decision maker.

Sentencing guidelines

9. There is a possible need to adopt sentencing guidelines or other means to identify clearly criminal sentences and other decisions that are so exceptional as to give rise to reasonable suspicions of partiality.

Case loads

10. There is a need to pay attention to excessive caseloads for individual judicial officers and to the maintenance of job interest and satisfaction within the judiciary.

Public knowledge

11. There is a need to improve the explanation to the public of the work of the judiciary and its importance, including the importance of maintaining high standards of integrity. The adoption of initiatives such as a national law day or law week should be considered.

Civil society

12. There is a need to recognize that the judiciary operates within the society of the nation it serves and that it is essential to adopt every available means of strengthening civil society as a means of reinforcing the integrity of the judiciary and the vigilance of the society that such integrity is maintained. To prevent

departures from integrity and to address the systemic causes of corruption, it is essential to have in place ways to monitor and audit judicial performance and the handling of complaints about departures from high standards of integrity in the judiciary.

Initiatives internal to the judiciary

Plan of action

13. A national plan of action to combat corruption in the judiciary should be adopted. The judiciary must be involved in such a plan.

Seminars

14. Workshops and seminars for the judiciary should be conducted to consider ethical issues in order to combat corruption in the ranks of the judiciary and heighten vigilance by the judiciary against all forms of corruption.

Computerization of records

15. Practical measures should be adopted, such as computerization of court files, in order to avoid the reality or appearance that court files have been “lost” so as to require payment of “fees” for their retrieval or substitution. In this respect, modern technology should be utilized by the judiciary to improve efficiency and to address corruption.

Direct access

16. Systems allowing direct access should be implemented to permit litigants to receive advice directly from court officials concerning the status of their cases awaiting hearing.

Peer pressure

17. Opportunities for peer pressure amongst judicial officers should be enhanced in order to help maintain high standards of probity within the judicature.

Declaration of assets

18. All judicial officers should be rigorously obliged to declare publicly their assets and the assets of parents, spouse, children and other close family members. Such declarations should be publicly available and regularly updated. They should be inspected after initial appointment and monitored from time to time by an independent and respected official.

Judges’ associations

19. Associations of judges and equivalent bodies should be involved in setting standards for the integrity of the judiciary and in helping to rule on best practices and report on the handling of complaints against errant judicial officers and court staff.

Internal procedures

20. Internal procedures should be adopted within court systems, as appropriate, to ensure regular changes in the assignment of judges to different districts, having regard to appropriate factors including gender, race, tribe, religion, minority

involvement and other features of the judicial office-holder. Such rotation should be adopted to avoid the appearance of partiality.

Law of bias

21. Judicial officers, during their initial education and thereafter, should be regularly provided with instruction on binding decisions concerning the law of judicial bias (actual and apparent) and judicial obligations to disqualify oneself for actual or perceived partiality.

Judges' journal

22. A judges' journal, if one does not already exist, should be instituted, containing practical information on all of the foregoing topics relevant to enhancing the integrity of the judiciary.

Initiatives external to the judiciary

Media

23. The role of the independent media as a vigilant and informed guardian against corruptibility in the judiciary should be recognized, enhanced and strengthened by the support of the judiciary itself.

Media liaison

24. Courts should be afforded the means to appoint, and should appoint, media liaison officers to explain to the public the importance of integrity in the judicial institutions, the procedures available for complaints and investigation of corruption and the outcome of any such investigations. Such officers should help to remove the causes of misunderstanding of the judicial role and function, such as can occur, for example, in a case involving an *ex parte* proceeding.

Inspectorate

25. An inspectorate or equivalent independent guardian should be established to visit all judicial districts on a regular basis in order to inspect and report on any systems or procedures that may endanger the actuality or appearance of probity and also to report on complaints of corruption or the perception of corruption in the judiciary.

National training centres

26. National training centres should be established for the education and training of officers involved in inspecting courts in relation to allegations of corruption. Such training centres should include the participation of judicial officers themselves at every level so as to ensure that the inspectorate is aware of the functions and requirements of the judiciary, including the importance of respecting and maintaining judicial independence.

Alternative resolution

27. Systems of alternative dispute resolution should be developed and made available to ensure the existence of alternative means to avoid any actual or suspected corruption in the judicial branch of government.

Bar associations

28. The role and functions of bar associations and law societies in combating corruption in the judiciary should be acknowledged. Such bodies have an obligation to report to the appropriate authorities instances of corruption that are reasonably suspected. They also have the obligation to explain to clients and the public the principles and procedures for handling complaints against judicial officers. Such bodies also have a duty to institute effective means to discipline members of the legal profession who are found to have been engaged in corruption.

Disbarment

29. Appropriate means should be put in place for investigation and, where proved, disbarment of any member of the legal profession, whether a judicial officer or a member of the court staff, alleged to be involved in corruption in relation to activities as a member of the legal profession.

Prosecutors

30. The role of public prosecutors in the investigation of allegations of judicial corruption should be acknowledged and appropriate training should be available to such officers.

Judicial administrators

31. The proper function of judicial administrators to establish systems that help to prevent the possibility or appearance of judicial corruption should be acknowledged. Appropriate training for such administrators should be made available.

Involving others

32. Procedures for the investigation of allegations of judicial corruption should be designed after due consideration of the views of judicial officers, court staff, the legal profession, users of the legal system and the public. Appropriate provisions for due process for judicial officers under investigation should be established, bearing in mind their vulnerability to false and malicious allegations of corruption by disappointed litigants and others.

Criminal law

33. It should be acknowledged that judges, like other citizens, are subject to criminal law. They have, and should have, no immunity from obedience to the general law. Where reasonable cause exists to warrant investigation by police and other public bodies of suspected criminal offences on the part of judicial officers and court staff, such investigations should take their ordinary course, according to law.

C. Recommendations of the federal integrity meeting for Nigerian Chief Judges

The First Federal Integrity Meeting for Nigerian Chief Judges also agreed on a series of recommendations covering four priority areas, namely access to justice, timeliness and quality of justice, public trust and the effectiveness and credibility of the complaints system. The meeting made the recommendations set out below.

Access to justice

1. Existing codes of conduct should be reviewed and, where necessary, revised. This should include comparison with other more recent codes, including the draft Bangalore code.¹ Revised codes should include guidance to judges about the propriety of certain forms of conduct in their relations with the executive, such as their presence at airports to bid farewell to or welcome governors. It should also cover the need to ensure that anonymous complaints are received and investigated appropriately.
2. Consideration should be given to how judicial codes of conduct can be made more widely available to the public, for example, handouts and posters in the courts.
3. Consideration should be given to how best chief judges can become involved in enhancing the public's understanding of basic rights and freedoms, in particular through the media.
4. Court fees should be reviewed to ensure that they are both appropriate and affordable.
5. The adequacy of waiting rooms and other facilities for witnesses and other court users should be studied and, where these are lacking, consideration should be given to allocating any unused rooms for such purposes. Where rooms are not available, other possibilities to provide shade and shelter for witnesses in the immediate proximity of courts should be explored.
6. The number of itinerant judges with the capacity to adjudge cases away from the court centre should be reviewed.
7. Arrangements in the courts should be reviewed to ensure that they offer basic information to the public on bail-related matters.
8. The courts should be empowered to impose suspended sentences and fine levels should be updated.

Quality of justice

9. High levels of cooperation between the various agencies responsible for court matters (police, prosecutors, prisons) should be ensured.
10. Criminal justice and other court-user committees should be reviewed for effectiveness and established where they do not exist, including participation by relevant non-governmental organizations.
11. Old outstanding cases should be given priority and regular decongestion exercises should be carried out.
12. Adjournment requests should be considered more seriously and granted less frequently.
13. A review of procedural rules should be undertaken to eliminate provisions with potential for abuse.
14. Courts at all levels should commence on time.
15. Increased consultation should take place between the judiciary and the bar to eliminate delay and increase efficiency.

16. The number of judges practising case management should be reviewed, and if necessary, increased.
17. Regular prison visits should be undertaken, together with human rights non-governmental organizations and other stakeholders.
18. The jurisdiction of lower courts to grant bail should be clarified (for example, in capital cases).
19. The adequacy of the number of court inspections should be reviewed and ensured.
20. The adequacy of the number of files called up under powers of review should be reviewed and ensured.
21. Ways to make accurate criminal records available at the time of sentencing should be examined.
22. Sentencing guidelines (based on the model of the United States of America) should be developed.
23. Cases where ex parte injunctions are granted, where judgements are delivered in chambers and where proceedings are conducted improperly in the absence of the parties should be monitored to check against abuse.
24. Lists and files should be reviewed to ensure that vacation judges hear only urgent cases.

Public confidence in the courts

25. Random inspections of courts by the Independent Corrupt Practices and Other Related Offences Commission should be introduced.

Improving effectiveness in responding to public complaints

26. Complaints at the federal, state and court levels should be systematically registered
27. Public awareness regarding public complaints mechanisms should be increased.
28. The efficiency and effectiveness of the public complaints system should be strengthened.

D. Recommendations based on the assessment

The present assessment resulted in a number of recommendations as set out below.

Accessibility to the courts

1. The number of adjournments and the total time required to resolve a case should be reduced.
2. The legal framework and its interpretation should be streamlined.

3. Clear rules for the reporting of crimes and obtaining information from the police should be established and enforced.
4. Public understanding of citizens' rights, especially in relation to bail processes, should be improved through awareness-raising activities.
5. Police should be trained with a special focus on their relationship with the public.²
6. Information regarding laws and regulations should be made available to all stakeholders in the justice process.
7. Alternative dispute resolution systems should be strengthened in order to provide for effective and timely dispute resolution able to support a modern economy.
8. Awareness should be increased regarding alternative dispute resolution systems.
9. Since ethnicity and income have been demonstrated to be factors reducing access to the courts, greater compliance by all justice sector institutions with the International Covenant on Civil and Political Rights is required. In particular, any person subject to a trial must be informed in a language they understand and be provided with an interpreter if he or she cannot understand or speak the language of the court.³

Timeliness and quality of justice delivery

The analysis conducted for the present report showed that confidence in the justice system is as much influenced by its independence, impartiality and fairness as by its efficiency. Consequently, public trust in the courts will not improve significantly unless the justice system is rendered more efficient.

10. Transparency and meritocracy in the hiring, management and promotion of both judicial and court staff must be improved.
11. The importance of political connections in treatment of staff must be reduced.
12. Efforts should be made to ensure reliable and timely enforcement of judicial decisions, in particular when linked to the basic security concerns of the citizen and the prevalence of the rule of law.
13. The specialization of judges should be increased.
14. Training and supervision of court staff should be enhanced.
15. The functions carried out by the police from the stage of reporting of cases to investigation and prosecution must be improved.
16. Inter-agency coordination and cooperation across the justice system should be increased.
17. Regular prison audits should be conducted to determine the circumstances of prisoners awaiting trial (offence, date of last appearance before the court and current case status).

18. Prison congestion should be reduced through creation of a committee to examine the cases identified during prison audits on their merit and recommending how cases should be treated expeditiously.

19. More training courses should be provided for all the participants in the justice process, namely judges, court staff, law enforcement and prison personnel and, most importantly, the state counsels and prosecutors.

Trust in the justice system

Public confidence in the criminal justice system is linked primarily to the actual or perceived lack of judicial independence, corruption, delays and weak enforcement of judicial decisions. It is therefore particularly those recommendations targeted at addressing these problems which will also eventually enhance public trust. Nevertheless, there are also a number of other measures that should be taken to improve the trust level of the public.

20. Court user committees should be established to improve the relationship between the public and the courts.

21. Public trust should be evaluated through regular assessments of levels of trust between different parts of the criminal justice system and the public.

22. Judicial decisions should be enforced in a reliable and consistent manner.

Independence, fairness and impartiality of the judiciary

In theory, the judiciary is independent, fair and impartial. However, based on the findings of the present assessment, more reforms are required to enhance and sustain the independence of the judiciary.

The lack of independence is strongly linked to corruption. A judicial system that is influenced by politics or by other factors is constantly undermined in its integrity and loses its ability to curb corruption; curbing corruption requires a strong and independent judiciary.

Perceptions of judicial independence were more positive in those states where there was a higher frequency of inspections and frequency of performance evaluations in writing. It is therefore recommended to enhance both the frequency and quality of court inspections and performance evaluations.

23. The independence of the judiciary should be enhanced through independent funding, while remuneration of judges and court staff should be in accordance with general public service provisions.

24. Meritocracy should be supported in order to reduce the importance of political influence and other non-merit based considerations in appointing judges.

25. Rules and performance standards should be defined for career development and the hiring of judges.

26. Public awareness regarding codes of conduct for justice sector staff should be enhanced and courts users should be encouraged to report breaches of such codes.

27. A credible public complaints system should be introduced and court users should be involved in the review of public complaints.

28. Ethics training should be given to all staff to make them understand and respect the applicable codes of conduct and other regulations and rules for the correct, honourable and proper performance of their functions.

Corruption within the justice sector

Corruption is not limited to the judiciary in Nigeria. Nonetheless, corruption in the judiciary may turn out to be the most harmful because it undermines the credibility, efficiency, productivity, trust and confidence of the public in the judiciary as the epitome of integrity.

29. Judges must honour their roles as a public servant over and above their personal interests.

30. Judges must also appreciate that their profession is a noble one and that its main tenets and epithets are integrity, transparency, honesty, objectivity, selflessness and accountability.

31. Accountability and performance of the justice sector should be increased through the enforcement of codes of conduct for all members of the justice sector and other measures including:

- A public-awareness campaign on how to file a complaint
- Ethics training for all justice sector staff
- A credible public complaints system and advice on disciplinary action
- Complaints committees with court users to review the merits of complaints
- A disciplinary board to discipline staff breaching the code of conduct
- Publicity on complaints received and action taken.

32. Reported cases of corrupt practices must be dealt with objectively, transparently and seriously in order to send the necessary deterrence signal to would-be offenders.

33. Timeliness of justice delivery must be increased and monitored.

34. Procedural steps must be reviewed and reduced.

35. The number of adjournments needs to be managed.

36. Opportunities for fraudulent behaviour by court staff must be limited, in particular, by increasing the awareness of court users concerning filing fees and other court-related costs in order to prevent court staff from fraudulently requesting non-existent “fees”.

37. More intense monitoring of “corruption-prone” types of cases, such as commercial cases, is needed.

38. Businesses should be made aware of complaint procedures to follow when asked for a bribe and warned of the consequences of bribing a court official.

39. Criminal liability of legal persons should be introduced.

40. Procedural steps that are particularly “corruption-prone”, should be monitored; this is particularly true for applications for bail, institution of proceedings, issuing of summons of the defendant, interrogatories and obtaining certified copies of proceedings.

41. Citizens should be educated about the duties of the police and complaint procedures to follow when those duties are not performed.

42. Corruption appeared less predominant in those courts where the performance of judges is evaluated in writing more frequently and where guidelines, policies and regulations on personnel management are formalized in writing; this suggests that performance evaluation is an effective tool for strengthening overall discipline, accountability and transparency in the courts.

43. Performance evaluation and monitoring should also be applied to court staff.

44. Police officers must account for and return all case files in their possession prior to any functional or geographical transfer.

Other recommendations

45. A federal action plan for the judiciary should be produced and published, containing succinct procedures for implementation within specific time frames.

46. Consideration should be given to greater involvement of business as a stakeholder in the judicial reform effort.

Notes

¹ The draft Bangalore code was subsequently revised and adopted as the Bangalore Principles of Judicial Conduct by the Judicial Group on Strengthening Judicial Integrity at the Round Table Meeting of Chief Justices, held at The Hague, in November 2002.

² At present, police recruits undergo training lasting six to nine months at one of the police colleges located in each of the four geographic regions of Nigeria (north, east, west and mid-west) and Lagos. Most recruits are expected to have a high school diploma in order to be admitted into the recruit grade of the police force. However, some recruits have school leaving certificates or a West African school certificate. Police officer cadets are trained at the Police Academy in Lagos. Some cadets are trained in India, Pakistan, the United Kingdom of Great Britain and Northern Ireland and the United States of America. The length of training at the Police Academy ranges from one to three years, depending on the cadet’s previous level of education. Persons with a first level university degree spend less than three years in training before they are commissioned as assistant superintendents. Officers of the Nigerian police force are presently recruited among university graduates. Obi N. I. Ebbe, Nigeria country report, World Factbook of Criminal Justice Systems, published by the United States Department of Justice and available at <http://www.ojp.usdoj.gov/bjs/pub/ascii/wfbcjnig.txt>.

³ Article 14 of the International Covenant on Civil and Political Rights, signed by Nigeria on 29 October 1993, states that all persons shall be equal before the courts and tribunals and that everyone charged with an offence is entitled, inter alia, to be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him; to be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it; and to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

V. Narrative

A. Sample description

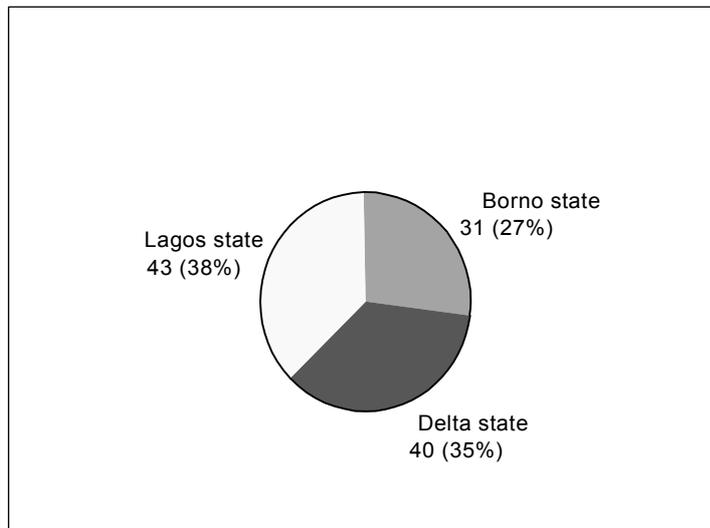
In the following section, the present report provides a detailed description of the perceptions and experience of judges, court users, lawyers, business people and prisoners awaiting trial. The data resulting from interviews with court staff could not be used, since the absolute majority of respondents refused to answer any questions relating to the integrity and capacity of the justice system in Nigeria. The same applies to the data resulting from the interviews with retired court staff. While they proved more willing to respond to the “content questions” it was not possible to interview a representative sample.

1. Judges

A total of 114 judges were interviewed in the three states: 31 in Borno (27 per cent), 40 in Delta (35 per cent) and 43 in Lagos (38 per cent) as shown in figure 24 below.¹

Figure 24

Sample composition (judges)



In Lagos state, respondents were on average four years younger than those in Borno and Delta states (see figure 25). In Lagos state, 66 per cent of the respondents were women, while in the other two states, roughly only a third of the respondents were women: 32 per cent in Borno state and 30 per cent in Delta state (see figure 26).

Figure 25
Average age of respondents (judges)

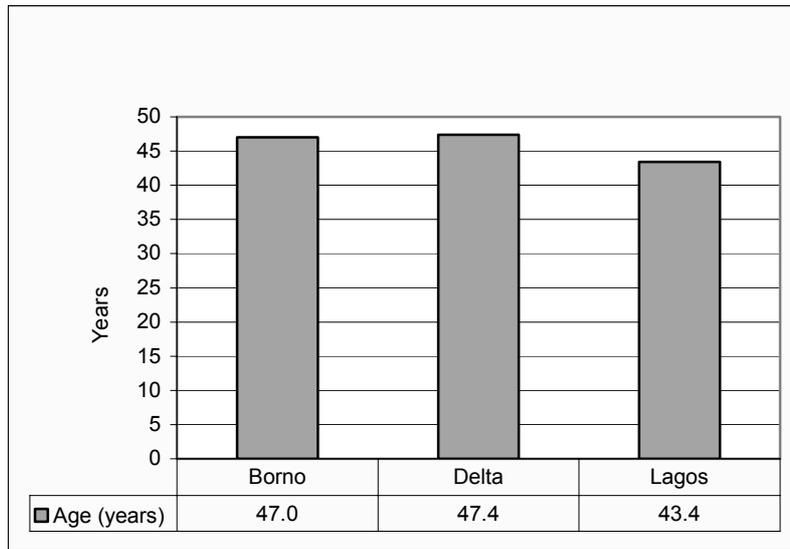
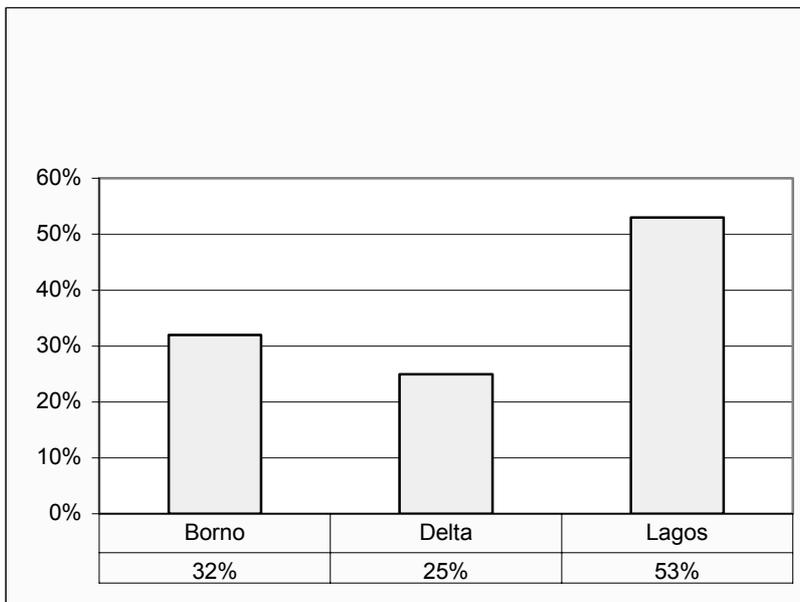


Figure 26
Female population in the sample (judges)



The ethnic composition of the sample differed significantly between the three States, with one major ethnic group dominating the sample in each state. In Lagos state, the majority of interviewed judges were Yoruba, while in Delta state, most of the judges were Igbo (47 per cent) and in Borno state they were mainly Kanuri (41 per cent). Other ethnicity of judges interviewed in Borno state included Bura (10 per cent) Chibok (10 per cent) and Margi (6.9 per cent). In Delta state, 36 per cent of the sampled groups belonged to the Uhrobo and 8 per cent to Ijaw.

The majority of judges interviewed said they handled both criminal and civil cases. In Borno state, there seemed to be little or no specialization with regard to the types of cases handled by judges. About 52 per cent of the respondents said they heard civil and criminal cases almost in the same proportion, while 32 per cent handled mainly civil cases and 16 per cent criminal cases. A similar result was obtained in Delta state, where 54 per cent of judges said they handled both civil and criminal cases in the same proportion, while 23 per cent said they handled mainly civil and 23 per cent mainly criminal cases. In Lagos state, judges seemed more likely to specialize in either criminal or civil cases. Only 43 per cent of respondents said they heard both case types, while 39 per cent said they handled mainly criminal cases and 19 per cent mainly civil cases, respectively (see figures 27-29).

Figure 27
Majority of cases heard by judges
Borno state

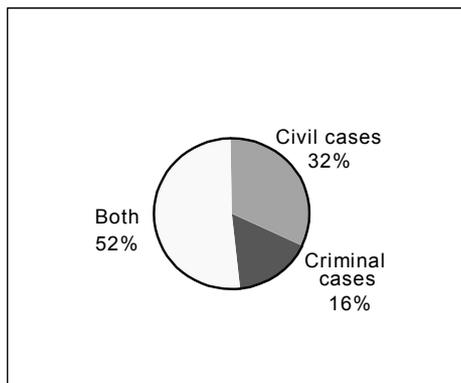


Figure 28
Majority of cases heard by judges
Delta state

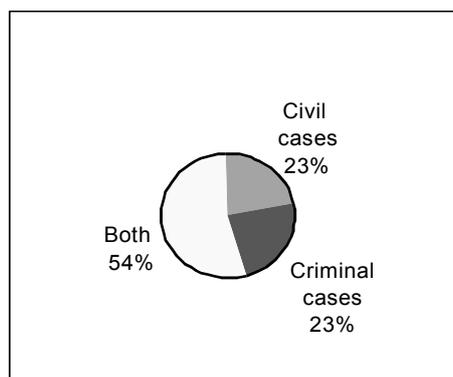
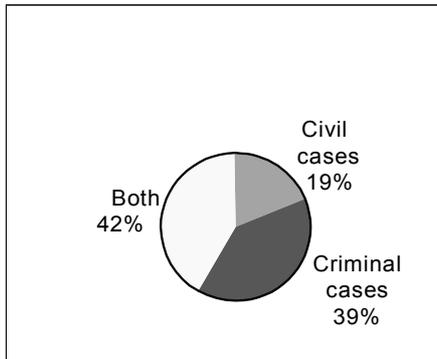


Figure 29
Majority of cases heard by judges
Lagos state



In addition, as far as professional experience was concerned, the sample differed significantly across the three states. In Lagos state, the respondents were far more likely to have worked in the private sector (more than 10 years on the average) compared to Delta (6.31 years) and Borno states (1.67 years). Judges in Borno and Delta states were more likely to have worked for the Government prior to being called to the bench (in Borno state 16 years, Delta state 13 years and Lagos state 6.5 years (see figure 30)). Judges in Borno and Delta states had more extensive experience working in the courts, with 11 years in Borno and 9 years in Delta, while in Lagos state, respondents had been working as judges on average for only 5 years (see figure 31). This result could also be explained in part by the lower average age of the sample in Lagos state.

Figure 30
Time spent by judges in government service

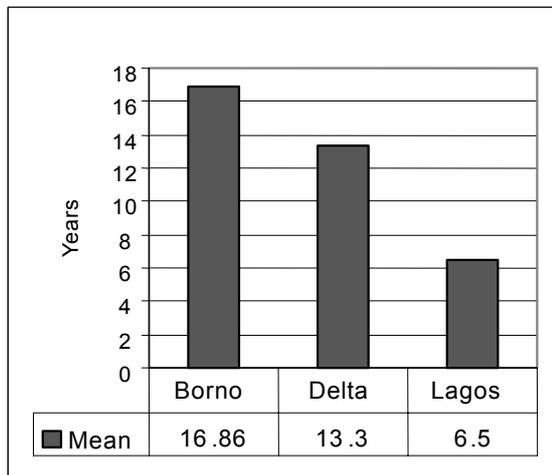
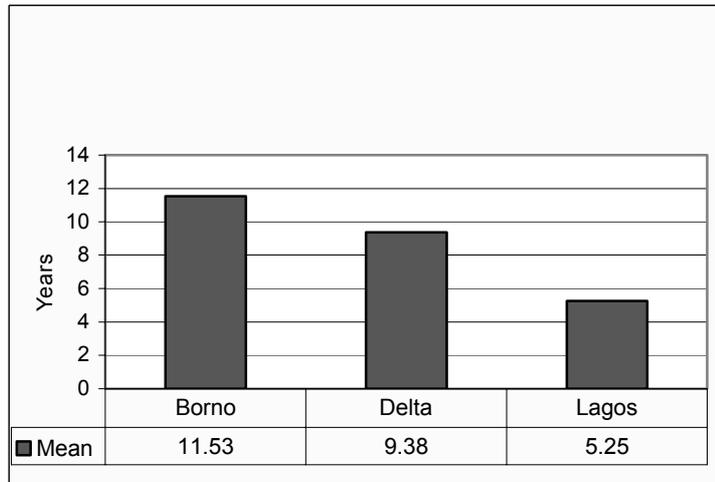


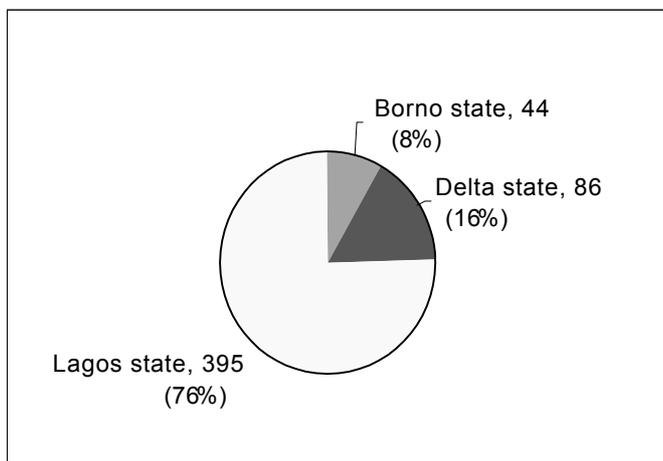
Figure 31
Time spent by judges in court service



2. Lawyers

The results of the survey of lawyers were based on a sample of 525 lawyers, including both defence attorneys and prosecutors working for the Office of the Attorney General. In the case of the lawyers, the sample was not equally distributed across the three states, mainly because of the fact that the majority of private attorneys practise out of Lagos state, which accounts for approximately 50 per cent of the total case load of Nigerian courts. More specifically, 395 lawyers were interviewed in Lagos state (75.2 per cent), 44 in Borno state (8.4 per cent) and 86 in Delta state (16.4 per cent) (see figure 32).

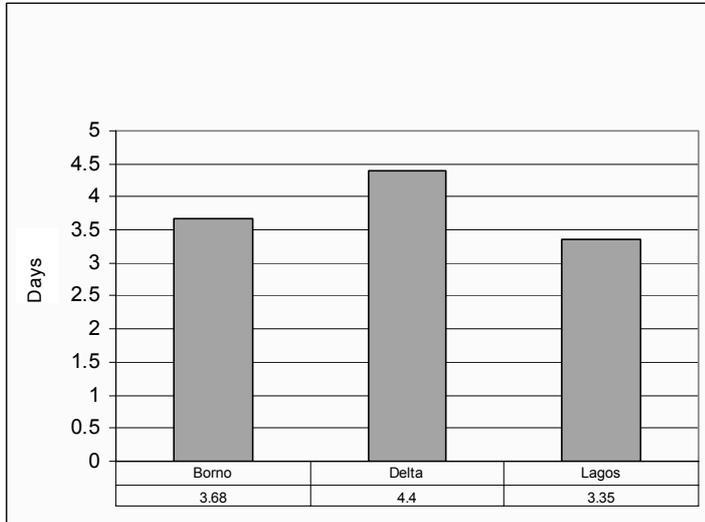
Figure 32
Sample composition (lawyers)



On average, lawyers in Delta state tended to go to court more often than their colleagues in Borno and Lagos states. Specifically, in Delta state, lawyers went to

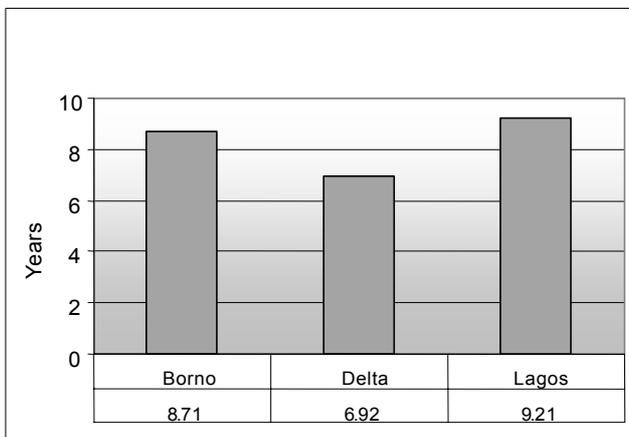
court almost every day (4.4 days per week), while in Borno state they went to court on average 3.68 days and in Lagos state 3.35 days (see figure 33).

Figure 33
Number of days per week spent by lawyers in court



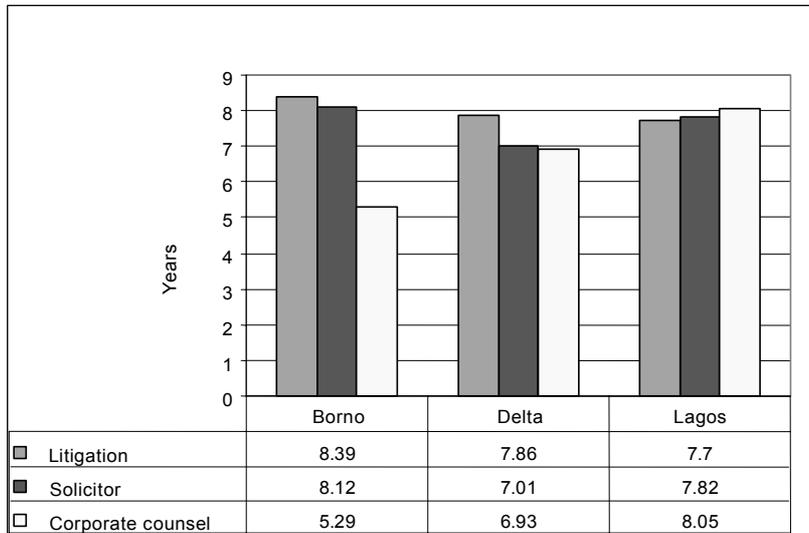
Lawyers in Lagos state at 9.2 years in practice, tended to have more professional experience than their colleagues in Borno state, with 8.7 years in practice, and in Delta state, with 6.9 years in practice (see figure 34).

Figure 34
Number of years in practice (lawyers)



As far as their professional experience in different fields was concerned, all respondents had worked both in litigation and as solicitors. The main difference was that respondents from Lagos state, unlike their colleagues from Delta and Borno states, had worked extensively as corporate counsel (see figure 35).

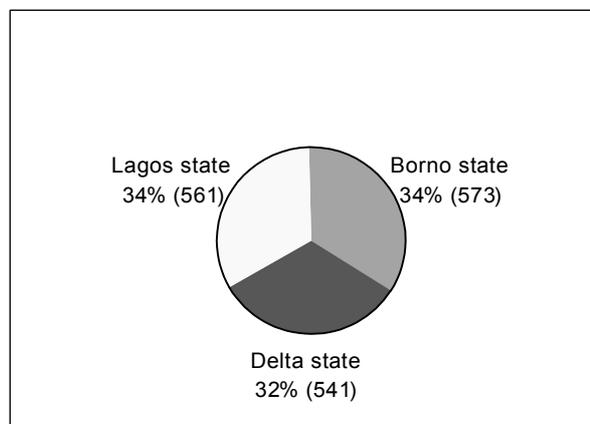
Figure 35
Experience in different fields (lawyers)



3. Court users

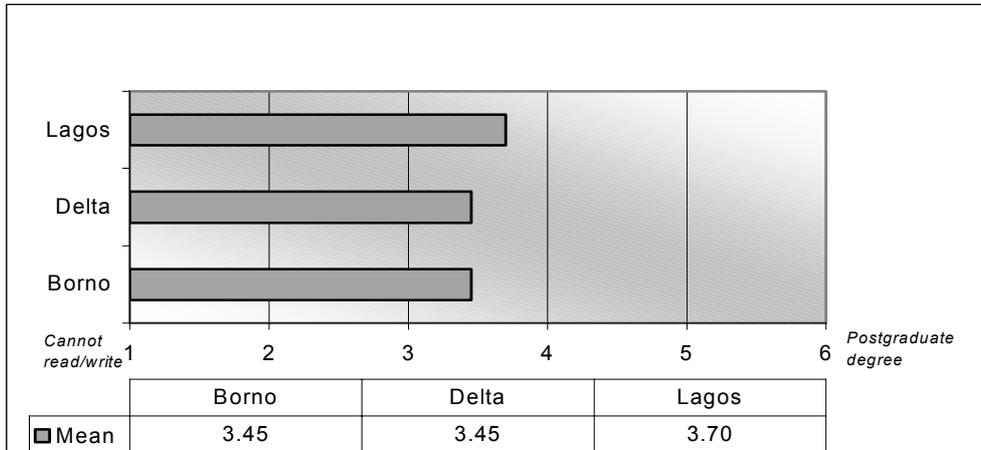
A total of 1,675 court users were interviewed in proportionate numbers across the three states: 573 in Borno state, 541 in Delta state and 561 in Lagos state (see figure 36).

Figure 36
Composition of court users sample



The basic characteristics of the sampled population were fairly homogenous across the three states. The average age of the respondents was 36 years in Borno state, 43 years in Delta state and 40 years in Lagos state. About 80 per cent of the court users interviewed in Delta state were male, while the proportion of male interviewees was 75 per cent in Borno state and 67 per cent in Lagos state. On a scale of 1 (low) to 6 (high), the average education level of respondents was between 3 and 4, which corresponded to a general or specialized secondary school (see figure 37).

Figure 37
Level of education of court users



The income level of the sample of court users was relatively low, with the majority of the respondents (more than 60 per cent) in all three states having earned less than US\$ 1,727 per annum (see figure 38). In comparison, court users in Delta state showed a higher income disparity compared to those in Lagos and Borno states. About 25 per cent of the population sampled in Delta state were people of modest economic circumstances, while in Lagos and Borno states, only 2 to 3 per cent of the sampled population fell into that category (see figure 39).

Figure 38
Income level of court users
 (US dollars per annum)

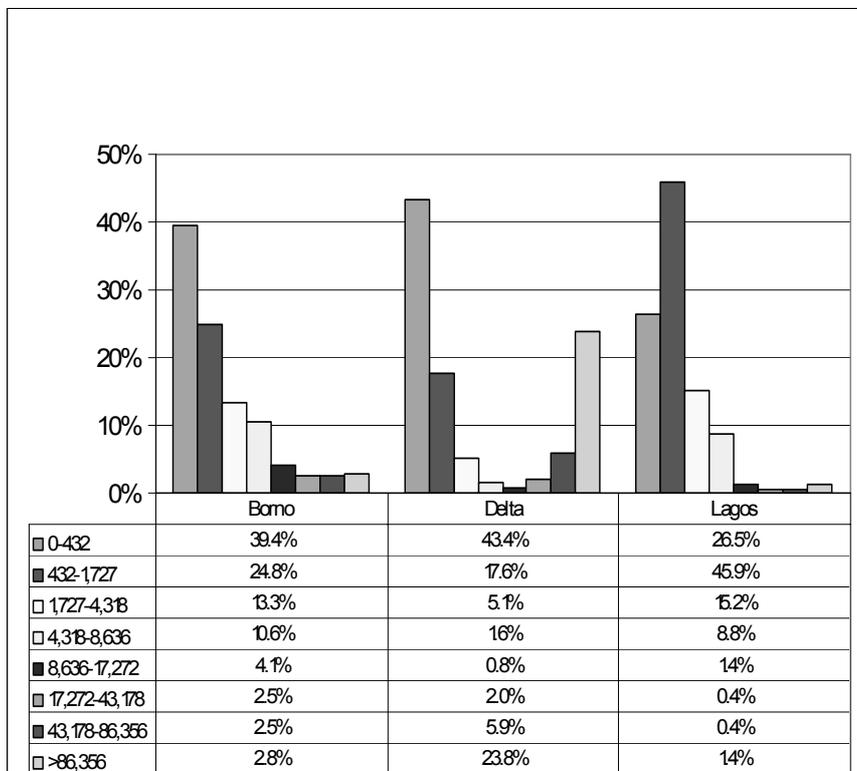
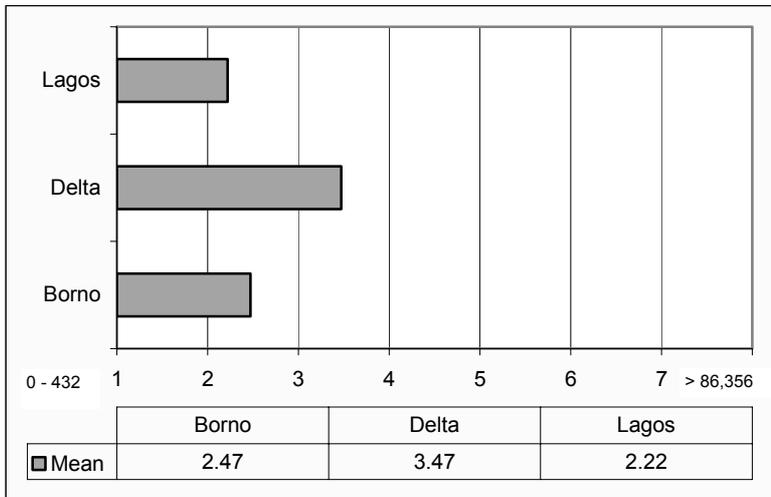


Figure 39
Average income level of court users
 (US dollars per annum)



The ethnicity of court users interviewed did not correspond to that of the judges and was far more widely distributed across various ethnic groups. In Borno state, for example, the sample was much more fragmented, with the main ethnicities being Kanuri (26.3 per cent), Hausa (18.9 per cent), Fulani (9.9 per cent), Shuwa (6 per cent) and Igbos (5 per cent) and the rest of the sample distributed among more than 20 other ethnicities. In Delta state, the majority of court users were Igbo (41.6 per cent) or Urhobo (23.5 per cent). In Lagos state, 46 per cent of the respondents were Yoruba, followed by 26.6 per cent Igbo, 7.4 per cent Hausa and the remaining 20 per cent distributed among 15 other ethnicities.

When asked about the nature of the case which had brought the interviewee to the court, some slight differences emerged in the respondents' opinions in the three states. Overall, however, the relative majority of respondents (32 per cent) were in court on that particular day in connection with a criminal case, with the highest percentage in Borno state (37 per cent) and the lowest percentage in Delta state (26 per cent). Other frequent reasons for coming to court included disputes relating to tenancy and other contracts, disputes over land and property and domestic disputes and divorces (see figures 40-42).

Figure 40
Nature of the case, Borno state

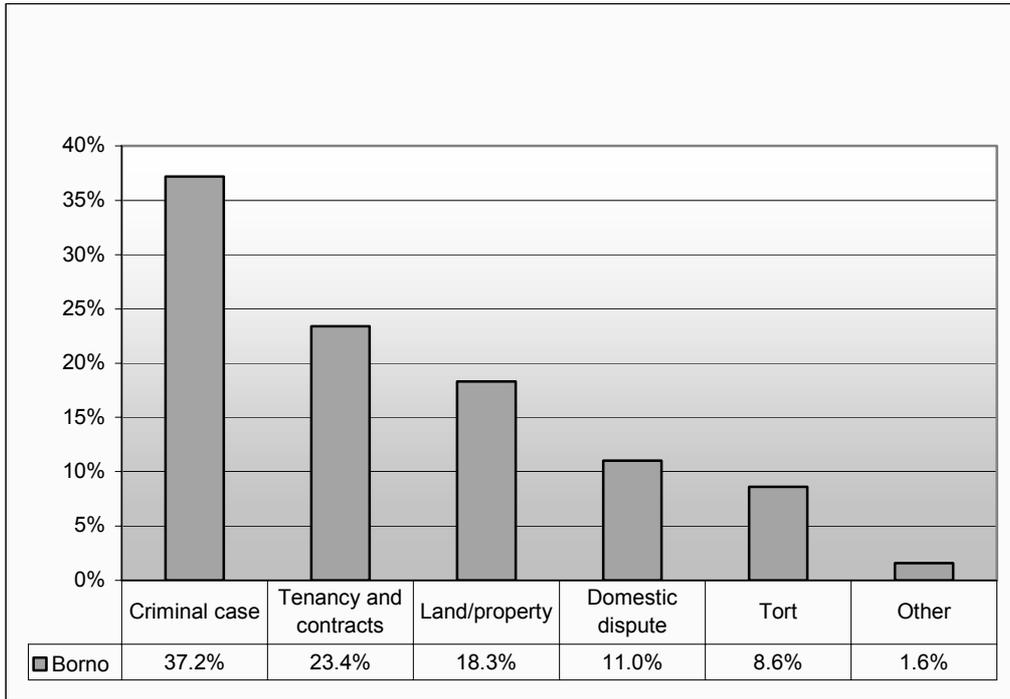


Figure 41
Nature of the case, Delta state

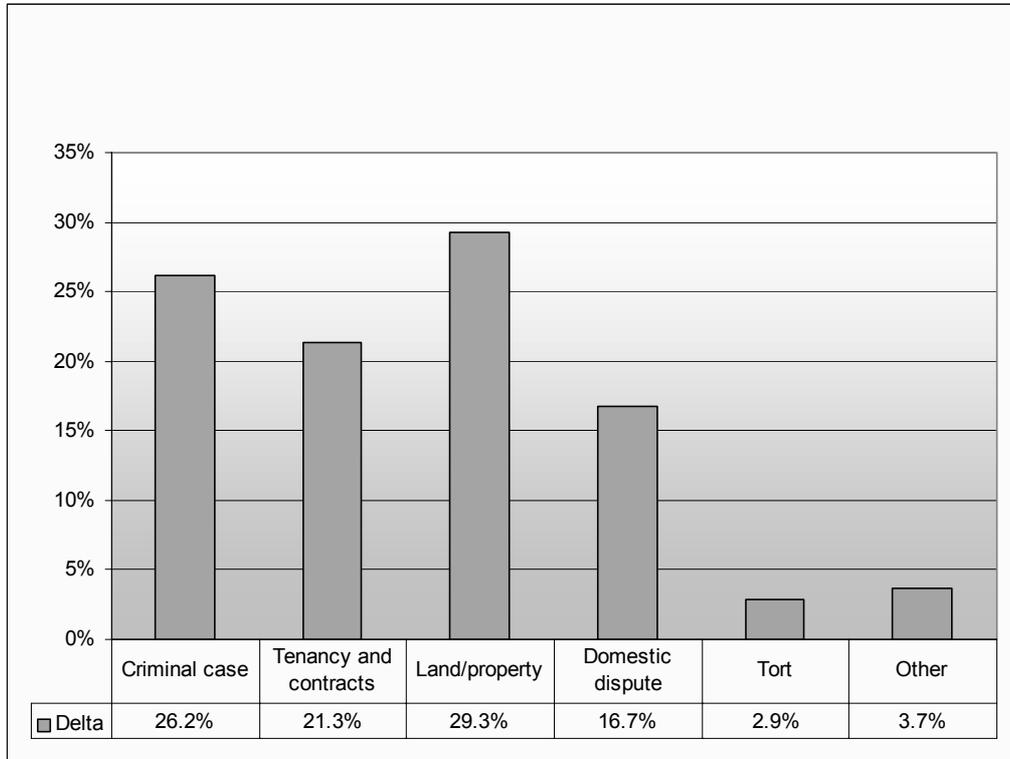
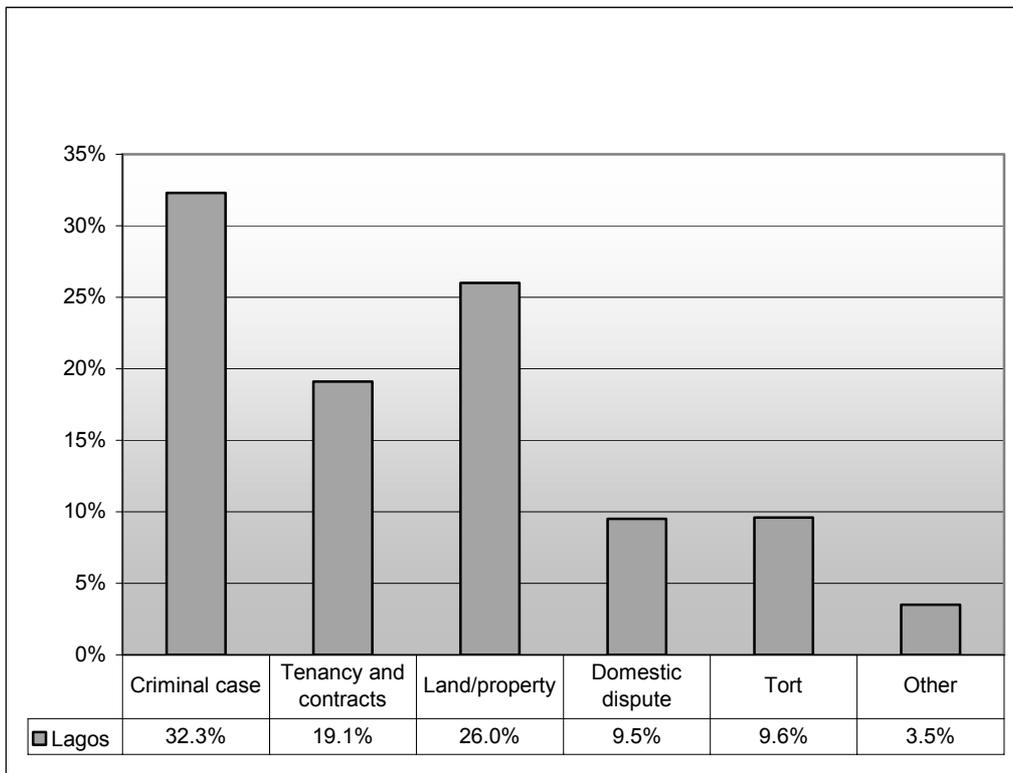


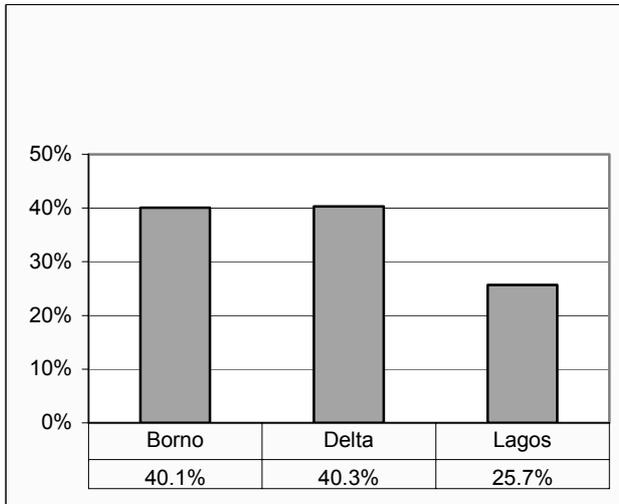
Figure 42
Nature of the case, Lagos state



Respondents were also asked whether any member of their household had been involved in a dispute of any kind during the previous two years. The responses showed that the lowest number of involvement of relatives in disputes was in Lagos² with (25.7 per cent), followed by Borno state with 40.1 per cent, and Delta state with 40.3 per cent (see figure 43).

Figure 43

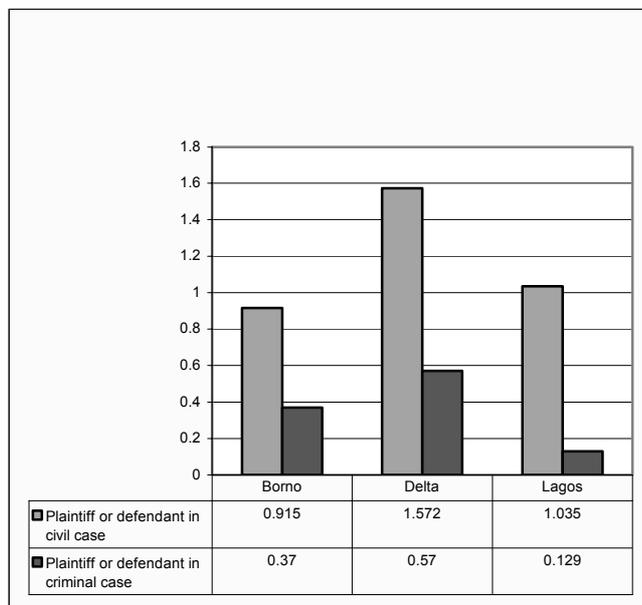
Households involved in a court case in previous two years



When asked how often a member of their household had been involved in a criminal or civil case during the two years prior to the interview (see figure 44), the responses showed that in Delta state, on average, a household had been involved 1.5 times in a civil case, while in Borno and Lagos states, this value decreased to one. A similar trend was observed with regard to criminal cases. In Delta state during the previous two years, members of the same household were involved 0.57 times in a criminal case, followed by Borno state with 0.37 times and Lagos state with 0.129 times.

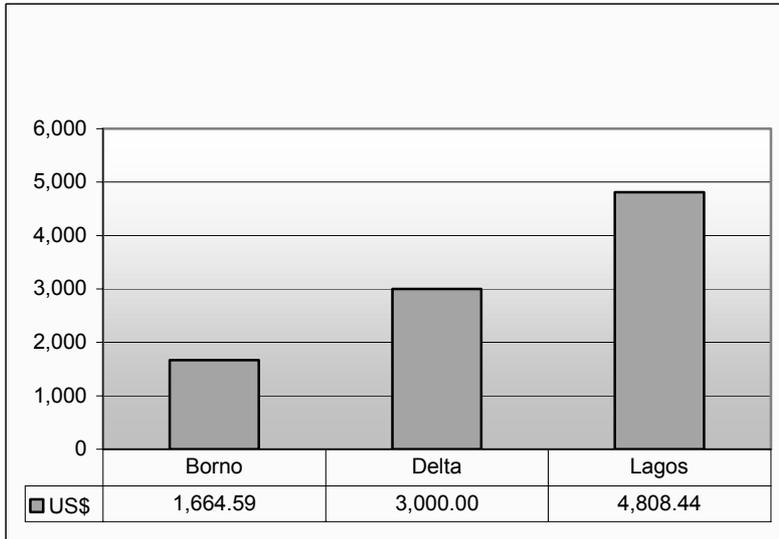
Figure 44

Question to court users: How many times was a member of your household involved in a civil or criminal case during the previous two years?



Court users were also asked about the money at stake in their most recent dispute. While income levels of court users seemed relatively homogenous across the three states, the average amounts at stake in the most recent court case differed significantly, at US\$ 4,808 in Lagos state, US\$ 3,000 in Delta state and US\$ 1,600 in Borno state) (see figure 45).³

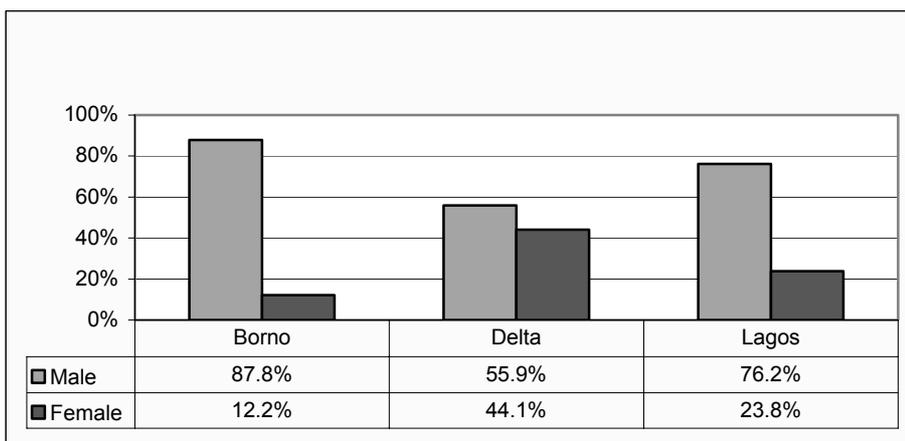
Figure 45
Amount of money at stake in most recent case (court users)



4. Business people

Unlike the court user survey, the business survey was not conducted as court exit interviews. A total of 156 business people were interviewed in Lagos state, 80 in Delta state and 43 in Borno state. In Delta state, 44 per cent of the respondents were women, while in Lagos and Borno states, the relative number of businesswomen was considerably lower, at 23.80 per cent and 12.20 per cent, respectively (see figure 46).

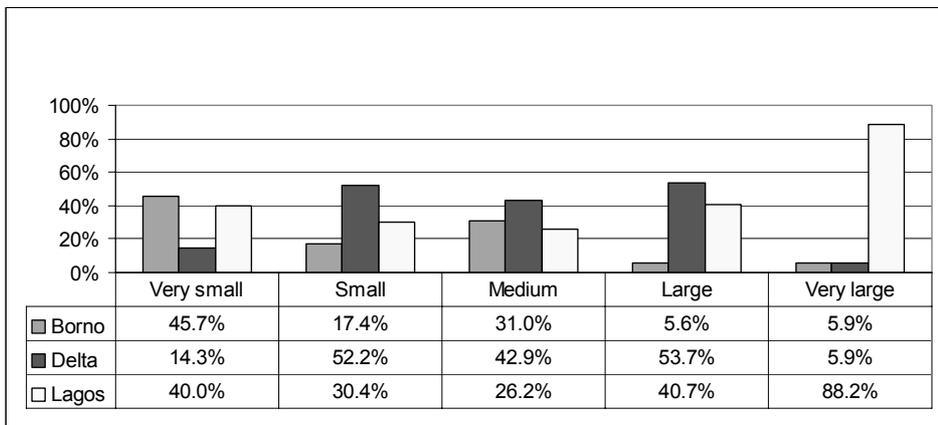
Figure 46
Gender of respondents (business people)



Moreover, the ethnic distribution of business people differed from the one of court users. In Borno state, the majority of business people interviewed were Kanuri (28.6 per cent), followed by Fulani (14.3 per cent) and Shuwa-Arabs (14.3 per cent). In Delta state, about 50 per cent of the respondents were Igbo and 18 per cent Yoruba, while the remaining sample belonged to 10 other ethnic groups. In Lagos state, the respondents were mainly Yoruba (40.6 per cent), followed by Igbo (13 per cent) and Hausa (7 per cent).

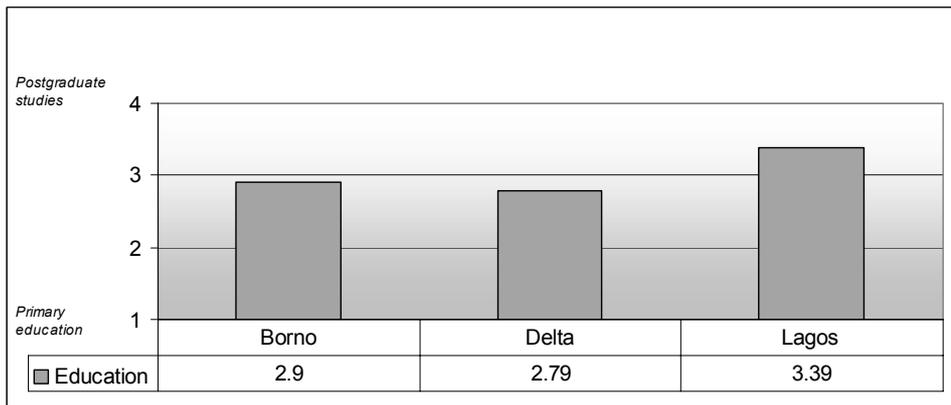
The size⁴ of the businesses participating in the survey varied across the three states, with the highest concentration of very small businesses (4 or less employees) in Borno state, of medium-size companies in Delta state and of very large companies in Lagos state (see figure 47).

Figure 47
Business size, by state



As for the level of education, managers in Lagos state tended to have higher levels of education than in the other two states (see figure 48).

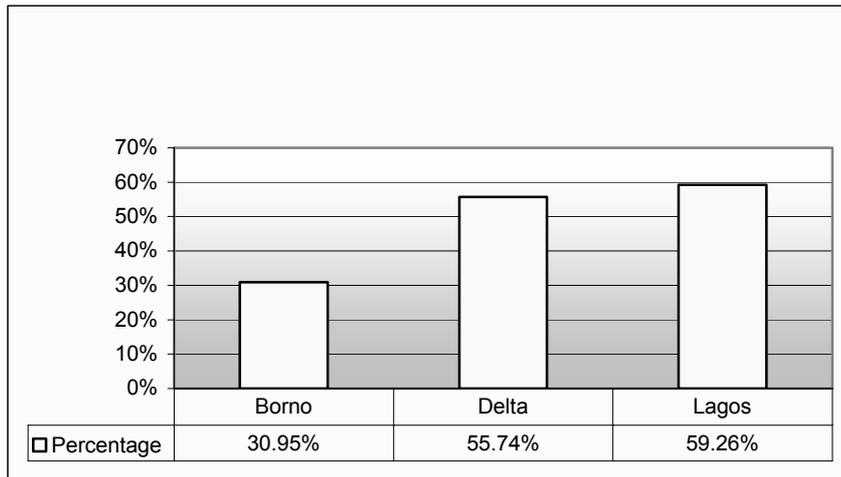
Figure 48
Level of education of business managers



Except for Borno state, the majority of respondents had interacted with the justice system during the previous two years. More specifically, 60 per cent of the respondents in Lagos state and 56 per cent in Delta state had been in contact with the courts, while in Borno state only 30 per cent of the interviewed business people had had such an experience (see figure 49).

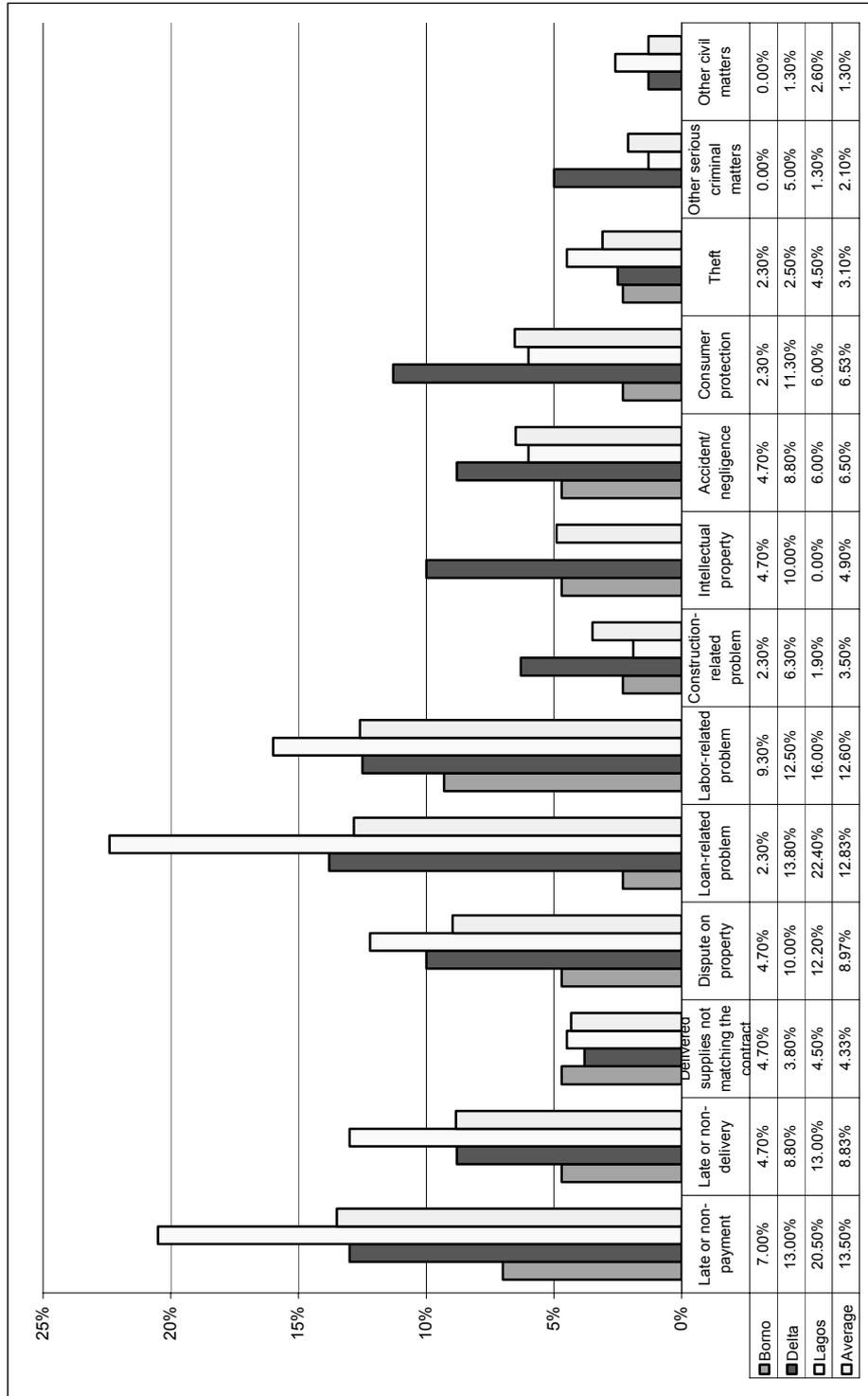
Figure 49

Percentage of respondents involved in court proceedings in previous two years (business people)



In Lagos state, about 38 per cent of the respondents had used the courts for solving loan-related disputes, 35 per cent for payment-related disputes, 28 per cent for labour-related problems and 20 per cent for disputes over property. Problems relating to late or wrong delivery, negligence or consumer protection were less relevant. In Delta state, loan and labour-related disputes (23 per cent and 20 per cent, respectively) were the most frequent reason for involvement of respondents with the formal justice system during the previous two years. Moreover, in comparison to the other two states, in Delta state, business people seemed more likely to get involved with the justice system in connection with serious criminal offences. Other reasons included legal problems relating to construction, intellectual property, negligence and consumer protection. In Borno state, most of the legal disputes originated from labour-related problems (27 per cent) or from delayed or refused payments for services and goods (20 per cent) (see figure 50).

Figure 50
Subject of the proceeding (business people)

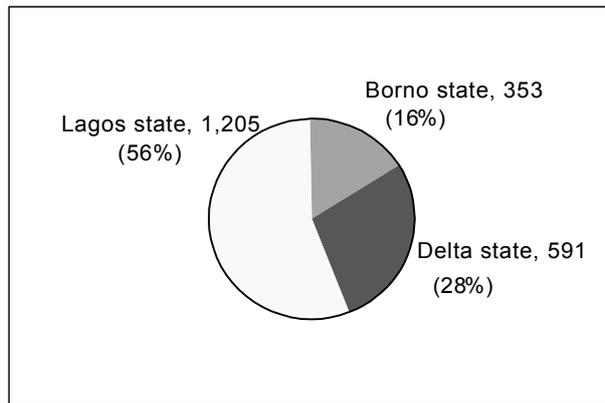


5. Prisoners awaiting trial

A total of 2,149 prisoners awaiting trial were surveyed. 1,205 were interviewed in Lagos state (56 per cent), 591 in Delta state (28 per cent), and 353 in Borno state (16 per cent) (see figure 51).

Figure 51

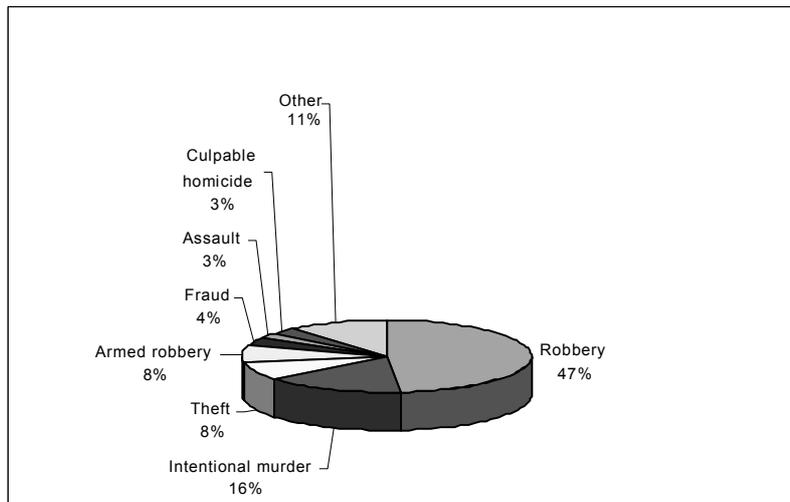
Composition of sample of prisoners awaiting trial



The main offences allegedly committed by respondents among prisoners awaiting trial included robbery and intentional homicide, followed by armed robbery and theft (see figure 52).

Figure 52

Type of offences allegedly committed by prisoners awaiting trial



A stratified comparative analysis of the offences in all three states showed that most of the prisoners were awaiting trial for robbery offences. However, considerable variations could be observed with regard to the percentage of prisoners awaiting trial for other offences. In Borno state, a relatively high percentage of the respondents (19 per cent) was awaiting trial for theft, while this percentage was by far lower in Delta (6.6 per cent) and Lagos states (5.6 per cent). In Lagos and Delta states, intentional homicide was, after robbery, the second most common crime

(32.5 per cent and 15.7 per cent respectively) for which alleged offenders were awaiting trial in custody (see figures 53-55).

Figure 53

Main offences in Delta state

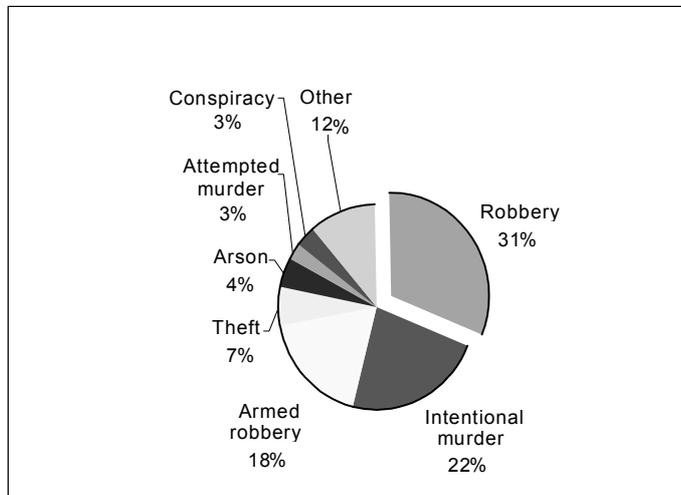


Figure 54

Main offences in Lagos state

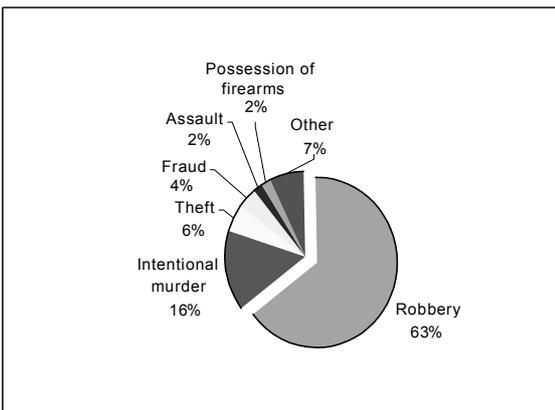
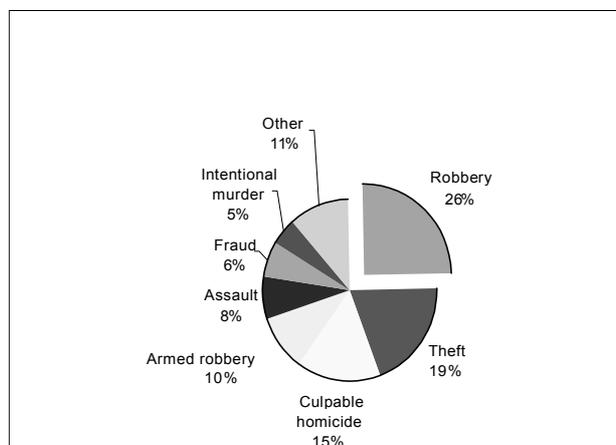


Figure 55

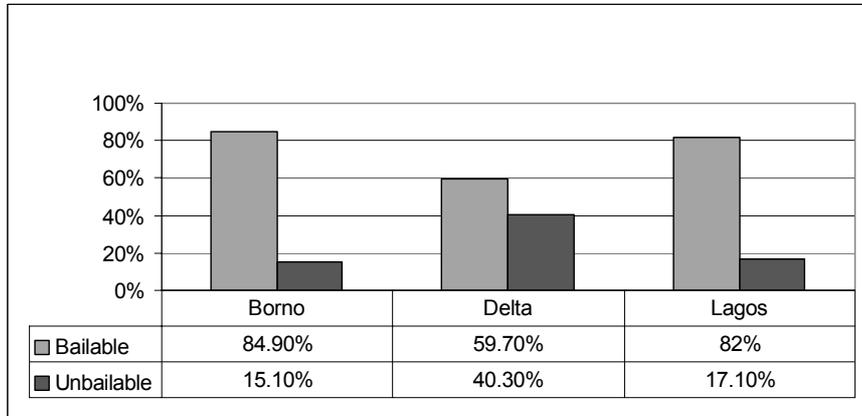
Main offences in Borno state



More than 80 per cent of the respondents in Lagos state and Borno state states were found to be awaiting trial for bailable offences (see figure 56).

Figure 56

Availability of bail



B. Access to justice

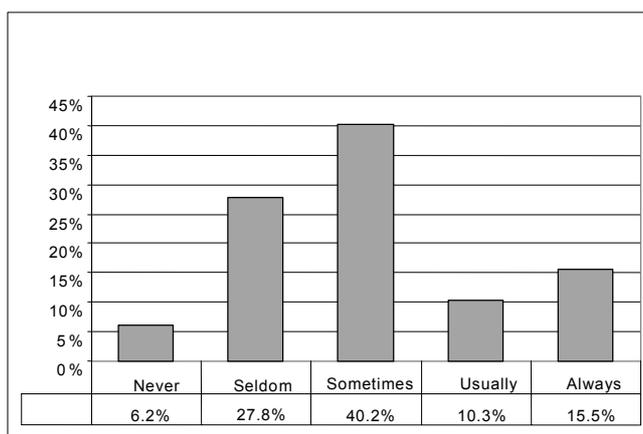
Access to justice is conditioned by multiple factors, including the quality, timeliness and affordability of justice delivery. Access to justice depends equally, however, on citizens being aware of their rights and the legal means and avenues that may be used in their defence against intrusions by the State and fellow citizens, as well as the public’s trust in the justice system to uphold the rule of law.

1. Judges

Judges were asked to evaluate the affordability of the justice system on a scale ranging from never to always affordable in their respective states. Most respondents were of the opinion that the justice system was only sometimes or seldom affordable (see figure 57).

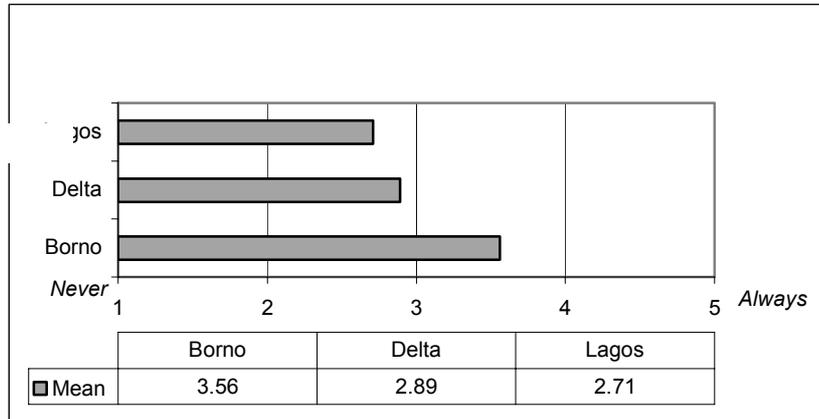
Figure 57

Affordability of the justice system (judges)



A comparative analysis of the data showed that more judges in Borno state considered the justice system to be affordable than in Delta and Lagos states (see figure 58), presumably because court fees had not been reviewed in Borno state for some time, while in Delta and Lagos states court fees had been increased more recently.

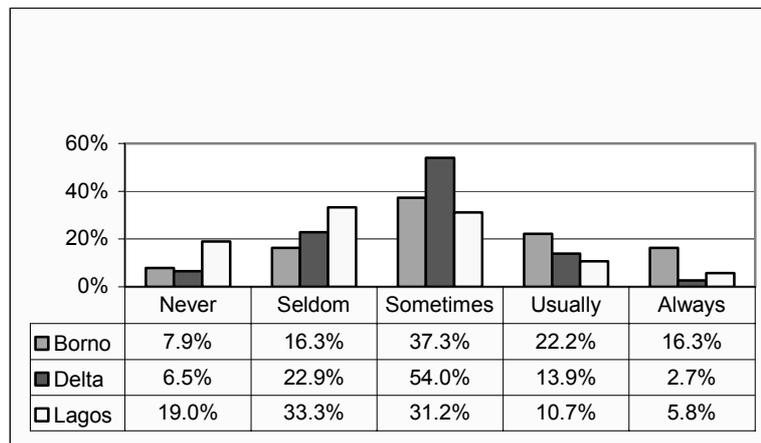
Figure 58
Affordability of the justice system, by state (judges)



2. Court users

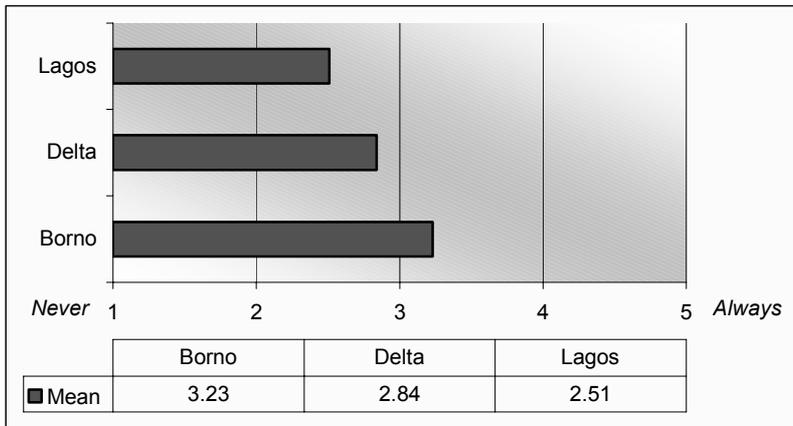
The affordability of the justice system is a crucial element for access to justice. It is interesting to observe that the opinions of court users and judges on the affordability of the justice system corresponded more or less with each other, with the majority of court users believing that the court system was only sometimes or seldom affordable (see figure 59).

Figure 59
Affordability of the justice system (court users)



In comparison, court users perceived the justice system in Delta state to be slightly less affordable than in Lagos and Borno state (see figure 60).

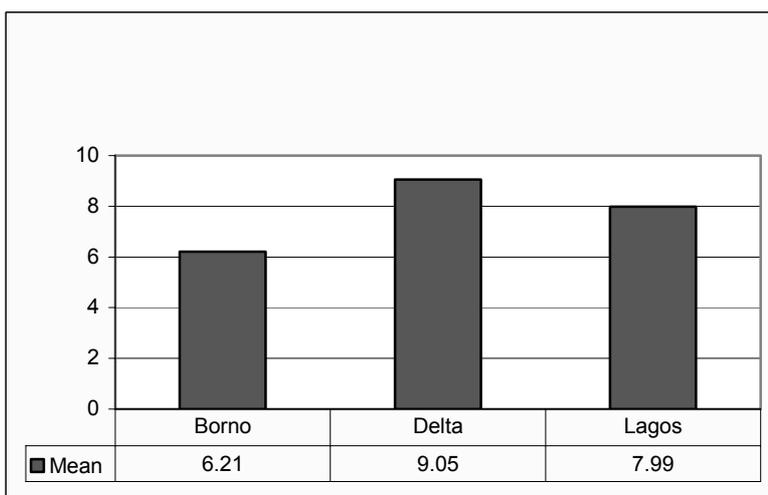
Figure 60
Affordability of the justice system, by state (court users)



Court fees are not the only factor determining the accessibility of the justice system. Overly lengthy proceedings may also impede citizens from seeking solutions through the formal justice system. The length of proceedings hinders access to justice in two ways. On the one hand, it increases costs, for example in terms of transportation and non-productive time. On the other hand, lengthy proceedings may frustrate complainants and induce them to seek either informal solutions or simply not to defend their rights at all.

On average in Delta state, court users had to come to court 9 times for the same case, while in Borno state, respondents came only 6.21 times and in Lagos state 8 times (see figure 61). In this context, it is important to observe that the number of hearings it takes in order to resolve a case has quite a different significance in the three states. In Borno state, the largest state among the three but the geographical coverage of the territory with courts is very low, the possibility of having to come back to court puts a considerably heavier burden on court users than in Lagos state, a city state where transportation is less of a problem.

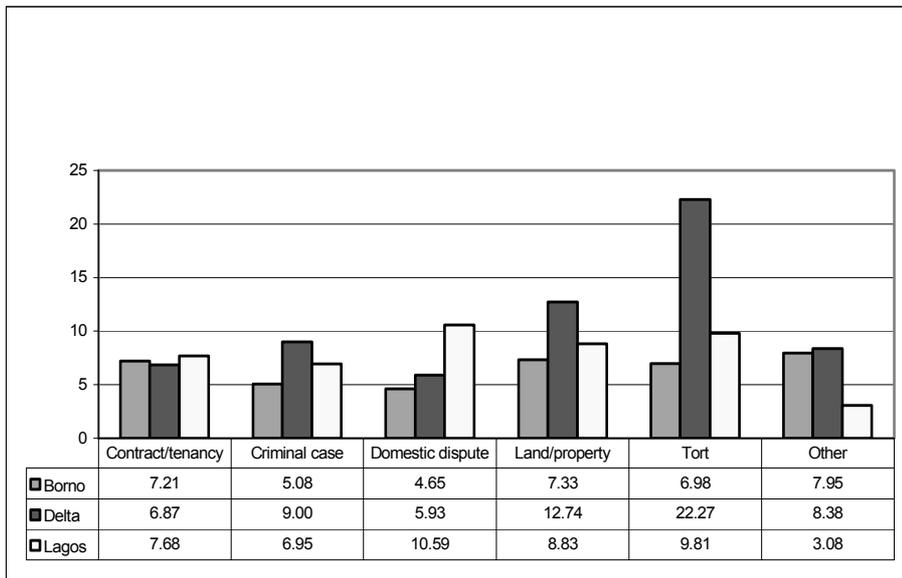
Figure 61
Number of times required to be present in court (court users)



In Delta state, the number of hearings required to resolve a case was higher than in the other two states. In particular, contract- and tenancy-related disputes seemed to require an unusually long time to resolve. The same could be observed for cases relating to domestic disputes in Lagos state (see figure 62).

Figure 62

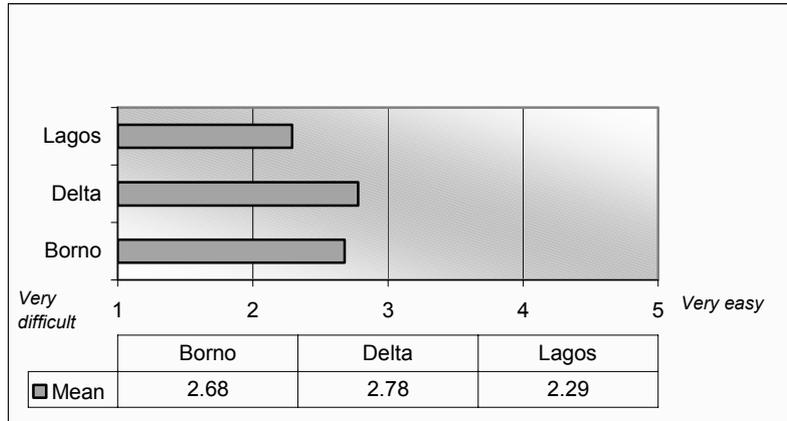
Number of times required to be present in court by type of case (court users)



Also in respect of the length of the proceedings and number of times needed for cases to be concluded, about 25 per cent of court users in Borno state answered that their cases were concluded on the day of the interview; while in Delta and Lagos states, the percentage of cases concluded on the day of the interview was considerably lower at 12.2 per cent and 6.9 per cent, respectively. The absence of judges or lawyers was mentioned as the principal reason for the frequent adjournments of cases in Delta and Lagos states.

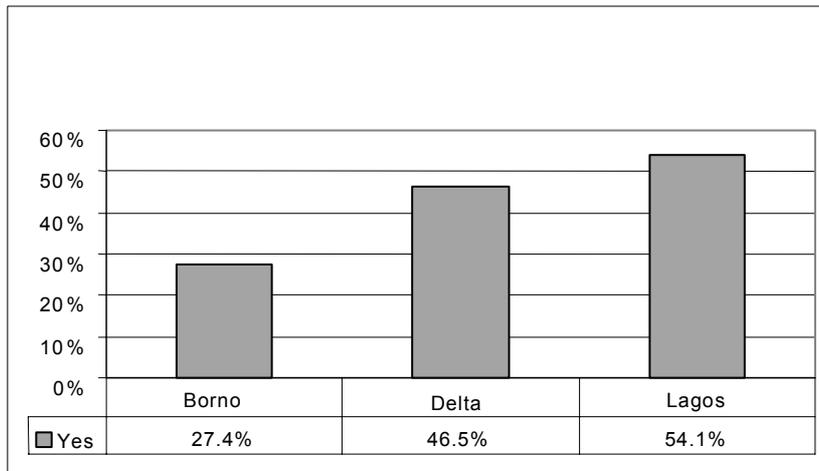
Access to justice is further dependent on the availability of basic information, the complexity of procedures and the responsiveness of some service providers. When asked to indicate on a scale of 1 to 5, with one being “very difficult” and five being “very easy”, how easy it was to report to the police, respondents rated the reporting process at 2.29 as most complex in Lagos state, followed Borno state with 2.68 and Delta state with 2.8 (see figure 63).⁵

Figure 63
Ease/difficulty of the reporting process (court users)



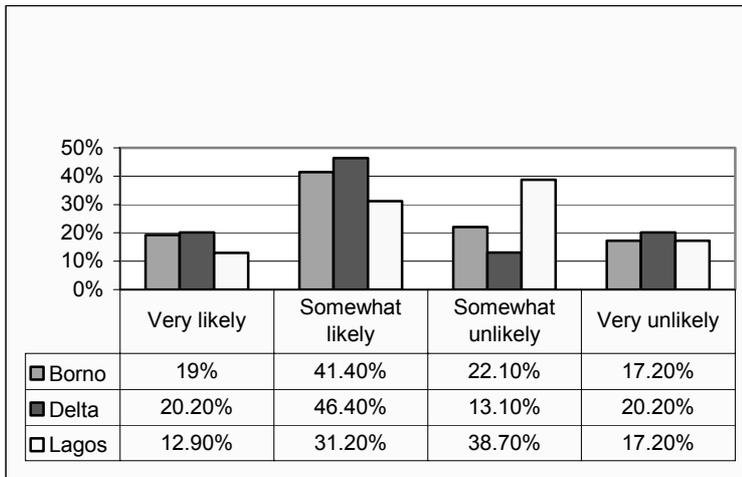
As a result of the problems described above, court users could feel less inclined to use the formal justice system. When asked if, in the previous two years, they had felt the need to go to court but decided not to do so, 27.4 per cent of the respondents in Borno state answered affirmatively, while 46.5 per cent and 54.1 per cent of respondents in Delta and Lagos states, respectively, seemed less likely to use the courts, even when they needed to (see figure 64).

Figure 64
Households not using the court system despite a perceived need (court users)



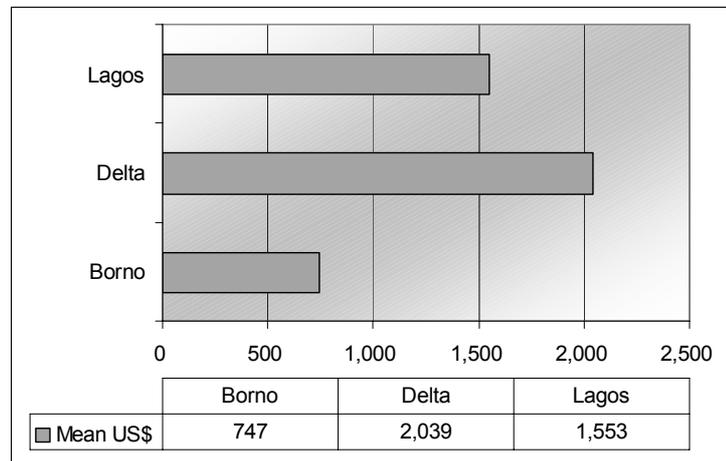
Court users were then asked if they would use the courts again given their previous experience. It was interesting to observe that in Lagos state, the highest percentage of the respondents (55 per cent) were unlikely or very unlikely to use the courts again, while in Borno and Delta states, more than 60 per cent of the respondents indicated that it was somewhat likely or even very likely that they would use the courts again (see figure 65).

Figure 65
Likelihood of using the court again (court users)



In general, it appears likely that, where access to justice is more difficult, the amount of money at stake should be higher for respondents to take it upon themselves to seek a solution through the formal justice system. Therefore, court users were asked what minimum amount had to be at stake for them to seek dispute resolution through the formal justice system. It emerged that in Borno state, the minimum amount was significantly lower than in Delta or Lagos states. However, these differences might be explained rather in the diverse economic conditions in the three states than in the accessibility of their respective justice systems (see figure 66).

Figure 66
Minimum amount to go to court for a civil dispute
 (United States dollars)

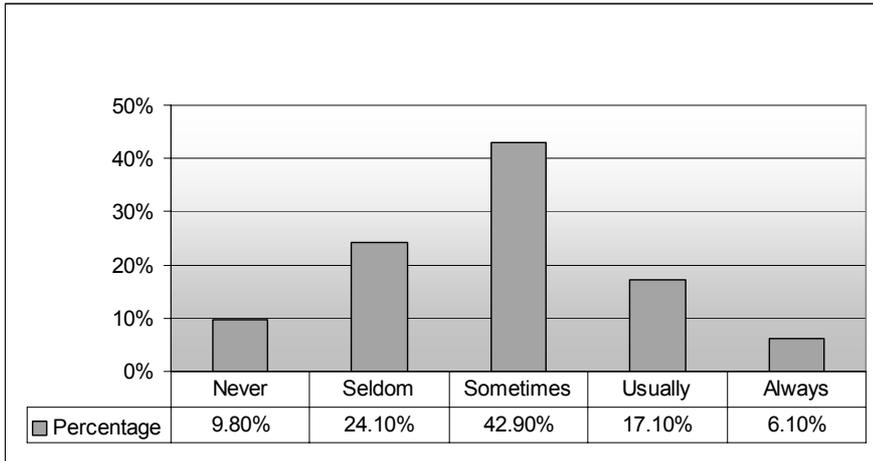


3. Business people

In general terms, business people seem to confirm the views expressed by court users and judges on the affordability of the justice system, with the majority of the respondents believing that the court system was only sometimes or seldom affordable (see figure 67).

Figure 67

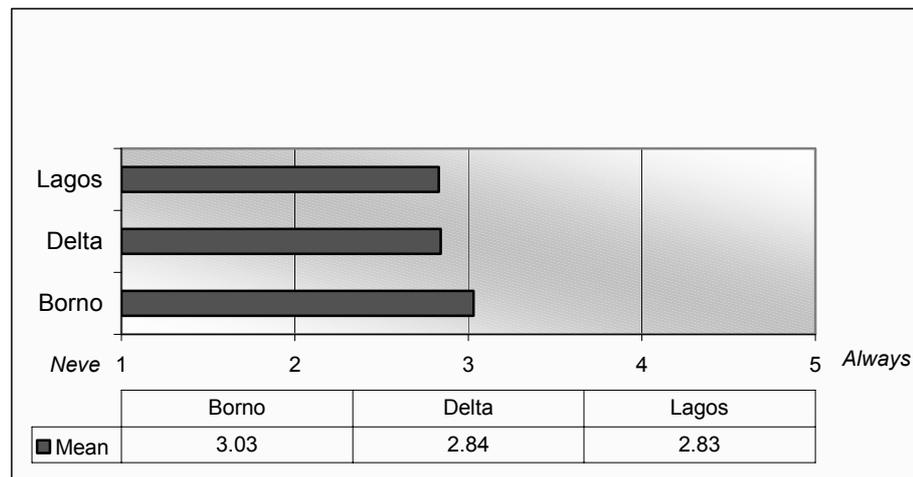
Affordability of the justice system (business people)



A comparative analysis of the perception of the affordability of the justice system across the three states showed that respondents among business people in Borno state were of the opinion that access to justice was slightly more affordable than in the other two states (see figure 68).

Figure 68

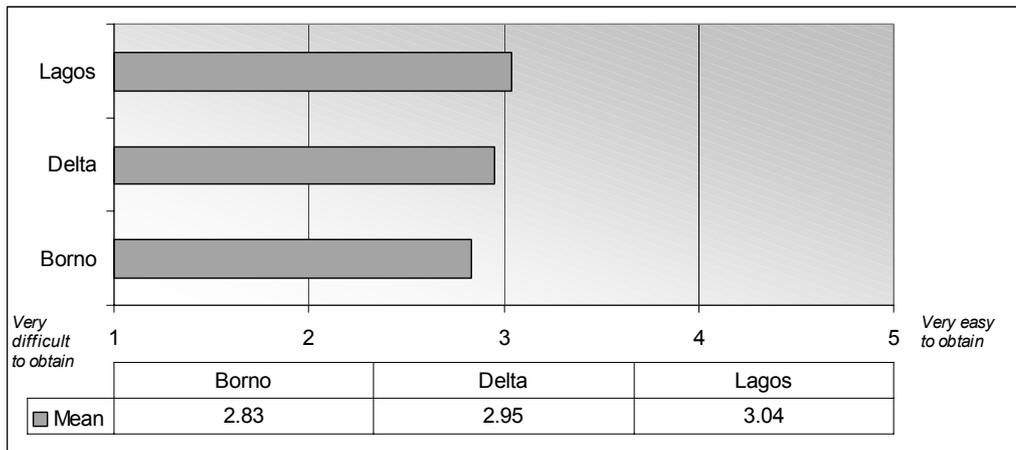
Affordability of the justice system by state (business people)



With regard to the availability of basic information, the complexity of procedures and the responsiveness of some service providers, business people were asked to indicate the difficulties encountered when trying to access laws and regulations that

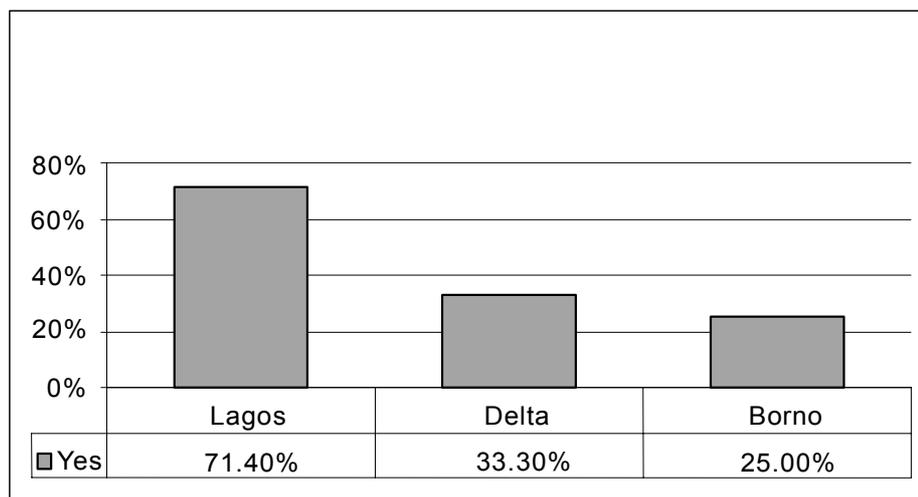
could affect their companies. In this context, no significant differences were discovered, with the respondents describing access to laws and regulations on average as neither difficult nor easy (see figure 69).

Figure 69
Availability of information on laws and regulations



Business people were also asked if, in the past, they had felt the need to go to court but decided not to do so as a result of the problems hampering access to justice. In Borno state, only 25 per cent of the respondents had refrained from accessing the formal justice system when they needed to, while in Delta and, especially, Lagos states, this ratio was considerably higher, with 33 per cent and 71.4 per cent, respectively (see figure 70).

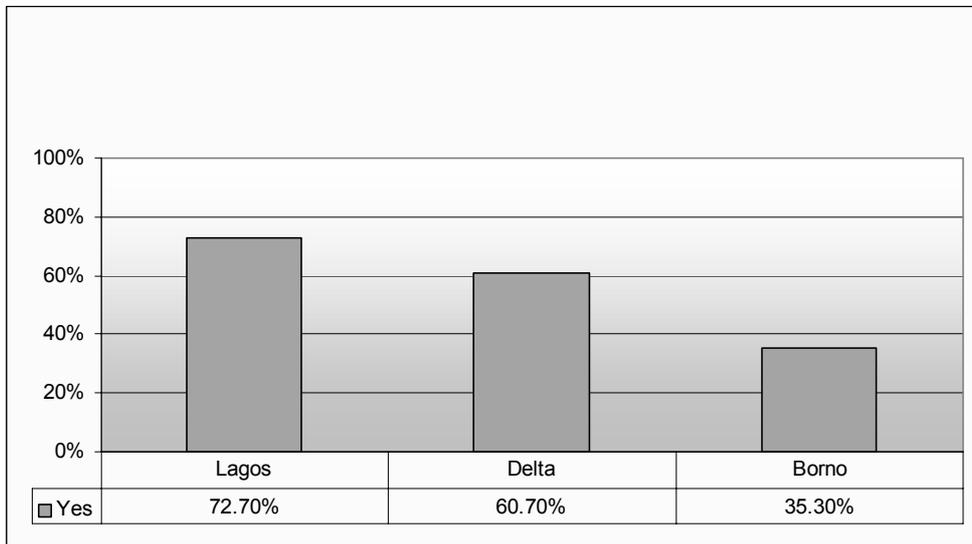
Figure 70
Business people not using the court system despite a perceived need



However, on a more positive note, it can be said that the readiness of business people to use the formal justice system did not seem to depend on whether the

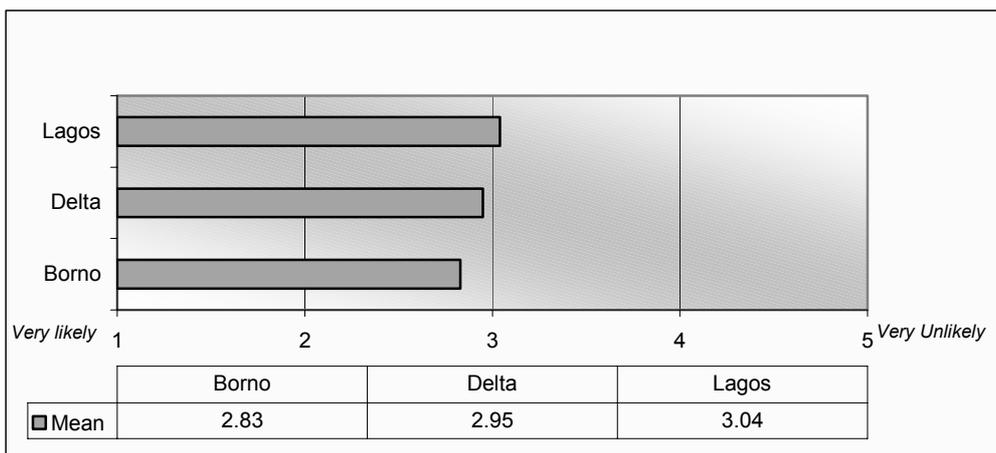
respondent to their claim was a private citizen, another business or the Government (see figure 71).

Figure 71
Attempts to solve a case against the Government outside the formal justice system (business people)



While the prior two questions indicated rather different levels of accessibility of the justice system across the three states, the responses to the subsequent question suggested that the justice sector institutions in all three states performed equally well when it came to fulfilling the expectations of business people, with the majority of respondents being neither likely nor unlikely to use the courts again, based on their last experience with the courts (see figure 72).

Figure 72
Likelihood of using the court system again (business people)



Business people were also asked about the minimum amount that had to be at stake in order for them to seek dispute resolution through the formal justice system. As in the case of court users, the minimum amount that had to be at stake for the respondents in Borno state to use the courts again, at US\$ 1,665, was considerably lower than in the other two states (\$2,218 in Lagos state and \$2,433 in Delta state).

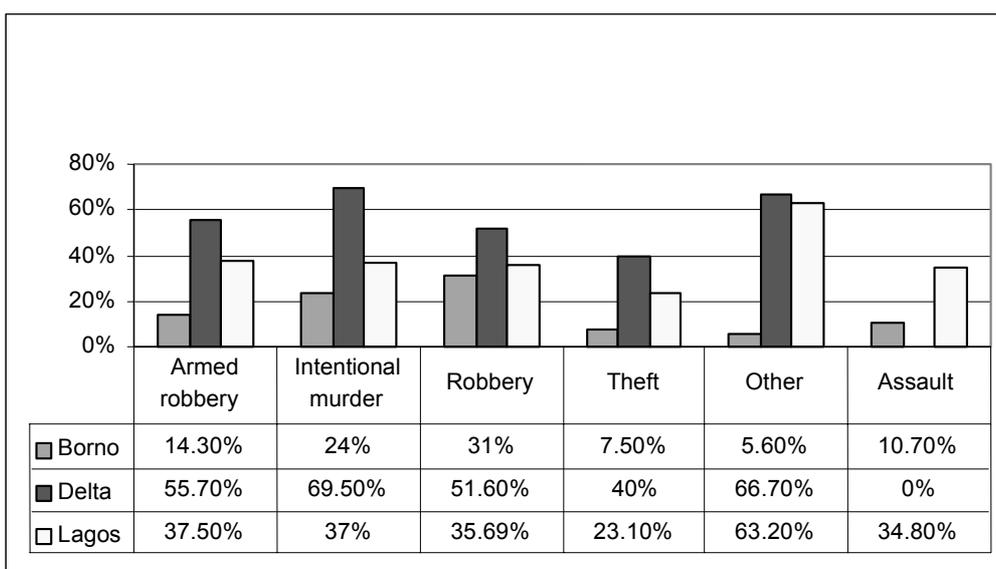
4. Prisoners awaiting trial

Prisoners face very specific problems regarding access to justice. Among the many factors, perhaps the two most essential components of access to justice from their perspective are whether they have retained a lawyer and whether they are aware of and have been given the possibility to apply for bail. Prisoners awaiting trial were asked questions on both aspects.

The results indicated that only 38 per cent out of the total sample had retained a lawyer, with percentages varying significantly among the three states. In Delta state, 54 per cent of the respondents had retained a lawyer, while in Lagos state 35 per cent, and in Borno state only 17 per cent had a lawyer. A further analysis revealed that these results were only slightly influenced by the differing crime structures in the three states. Generally, prisoners awaiting trial in Borno state had been by far less likely to have retained a lawyer (see figure 73).

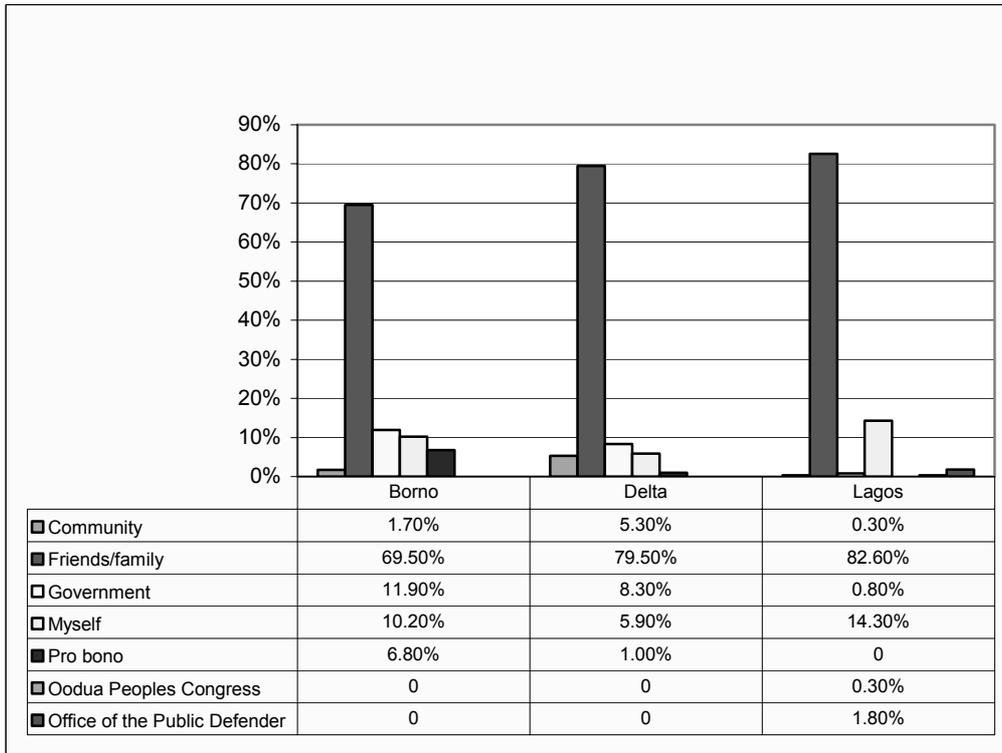
Figure 73

Prisoners retaining a lawyer, by type of offence



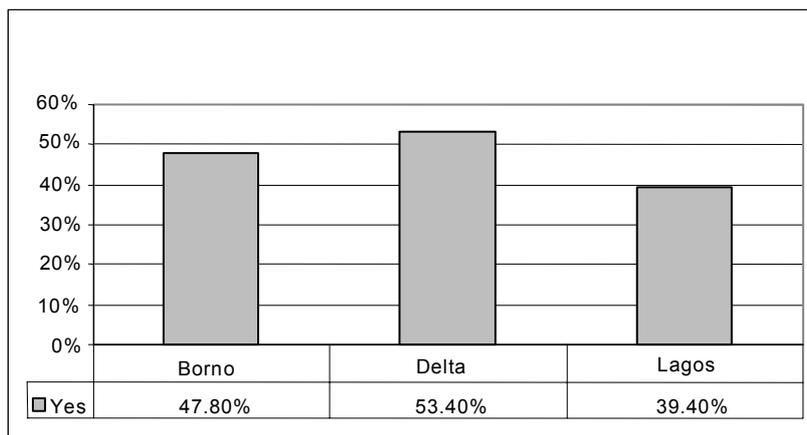
The single most important source of the money needed to pay lawyer's fees was the social network of the prisoners. In 70-80 per cent of the cases, respondents indicated their lawyer fees were paid by their family or friends. On average, only around 10 per cent of the respondents had been able to pay their lawyer fees themselves. As for the remaining sample, except for Lagos state, most lawyer fees were paid either by the Government (legal aid or Office of the Public Defender) or lawyers did not charge fees (pro bono). It emerged that, except for in Delta state, the community as such played hardly any role in financing lawyer fees for its members (see figure 74).

Figure 74
Source of payment of lawyer's fees



When asked if they were aware of the possibility to apply for bail, it emerged that in Delta state, 51.8 per cent of prisoners claimed to be aware of the possibility and conditions of applying for bail, followed by Borno state with 47.6 per cent and Lagos state with 36.4 per cent. This trend did not change when taking into account only those prisoners who had allegedly committed a bailable offence (see figure 75).

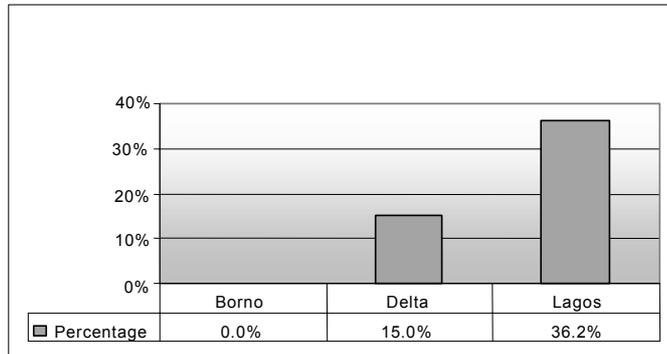
Figure 75
Knowledge of bail procedures among prisoners accused of a bailable offence



The survey also explored the sources of information concerning bail available to prisoners. It was found that in Lagos state, 37 per cent of the respondents had already known about bail conditions before they came into contact with the criminal justice system. In Delta state, only 15 per cent said they had been aware of the possibility and conditions of bail before their arrest and in Borno state almost all the respondents had been ignorant of the conditions and procedures for bail prior to coming into contact with the criminal justice system (see figure 76).

Figure 76

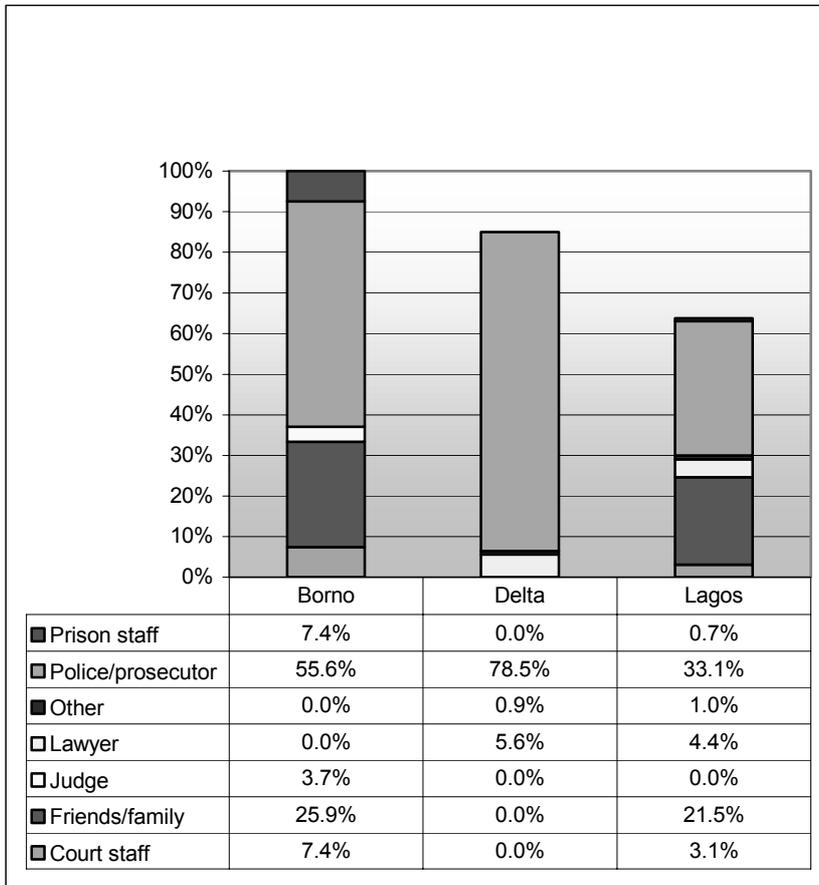
Knowledge of bail procedures prior to contact with the criminal justice system



For those who had learned about bail conditions only after their arrest, the police and prosecutors emerged as the most important source of information, followed by family members and friends (see figure 77).

Figure 77

Source of information concerning bail procedures, if not previously known



In addition, prisoners awaiting trial were asked whether they had been given the possibility to apply for bail. It emerged that in Delta and Lagos states approximately half of the respondents had been given the opportunity to apply for bail (50 per cent and 46.2 per cent), while in Borno state only 36.4 per cent indicated that they had been given this opportunity.

C. Timeliness and quality of justice delivery

1. Judges

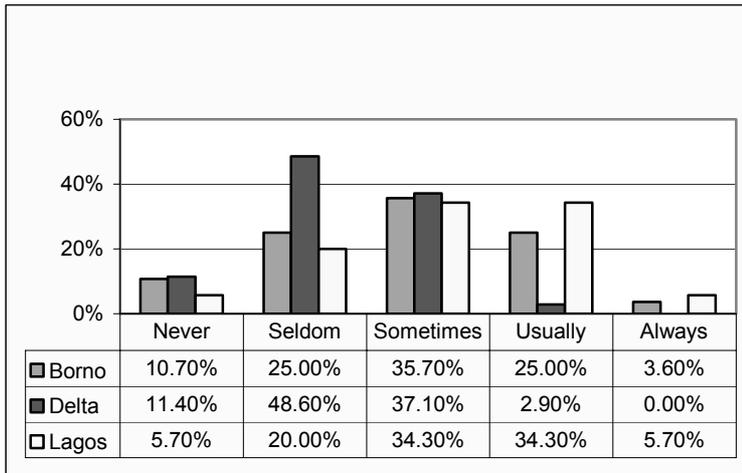
The survey administered to judges included questions relating directly or indirectly to the effectiveness and efficiency of the court. Respondents were asked both about their general perceptions of the timeliness and quality of the services provided by the courts, as well as specific experience and objective factors, such as the level of computerization and the existence of clear procedural guidelines.

(a) *Timeliness*

Judges' perceptions regarding the timeliness of the dispensation of justice differed significantly among the three states. In Delta state, respondents evaluated the efficiency of justice delivery more negatively, with more than 80 per cent believing that justice delivery was only seldom or sometimes quick enough, while in Borno state, most of the respondents agreed that justice delivery was either sometimes or usually quick enough. Efficiency was evaluated most positively in Lagos state, where more than 40 per cent of the judges were of the opinion that justice delivery was always or usually quick enough.

Figure 78

Question to judges: Is your country's justice system quick?

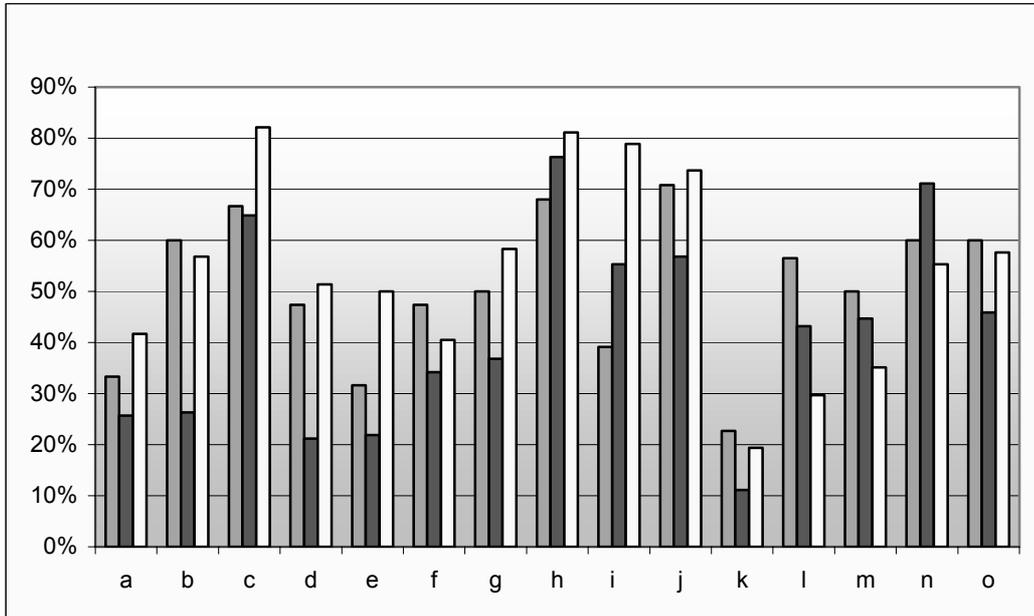


Judges were also asked to say whether they felt that the time available to dispose of a case was too long or too short for the interest of justice to be served. In this regard, respondents in all three states agreed that the time it took was either appropriate or too long for the interest of justice, while none of the respondents was of the opinion that the length of the trial process had been too short for the interest of justice (see figure 78).

Delays can occur at all stages of the justice process, from the filing of the case to the enforcement of the court decision. The survey therefore sought to determine at what stage of the justice process delays typically occurred. It emerged that respondents had experienced undue delays in particular during the trial proceedings and during the servicing of summons of witnesses and of defendants. Delays were also very frequent at the commencement of the trial, the transmission of court records to the court of appeal and at execution of the judgement (see figure 79).

Figure 79

Question to judges: Are you aware of undue delays at any of these stages?



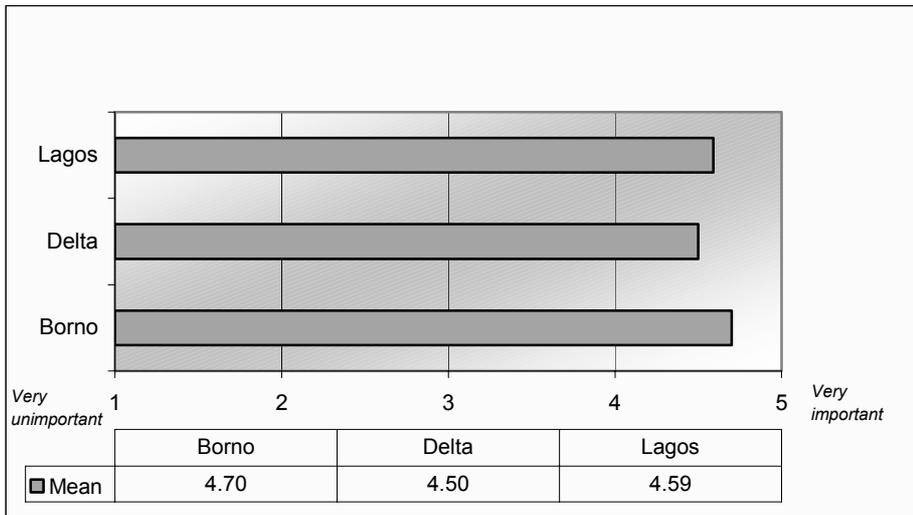
Notes

- a: Institution of proceedings
- b: Issue of summons—defendant
- c: Service of summons—defendant
- d: Discovery of documents
- e: Interrogatories
- f: Implementation of bail order
- g: Issue of summons—witness
- h: Service of summons—witness
- i: Commencement of trial
- j: Trial proceedings
- k: Delivery of judgement
- l: Obtaining copy of judgement
- m: Obtaining certified copy of proceedings
- n: Transmission of court records to appeal court
- o: Execution of judgement

Moreover, when compared with other factors relating to the functioning of justice delivery, respondents assigned great importance to expeditious case disposition in all three states. Indeed, the majority of the respondents perceived quick action on cases as the most important factor in justice delivery (see figure 80).

Figure 80

Question to judges: How important is expeditious case disposition to you?



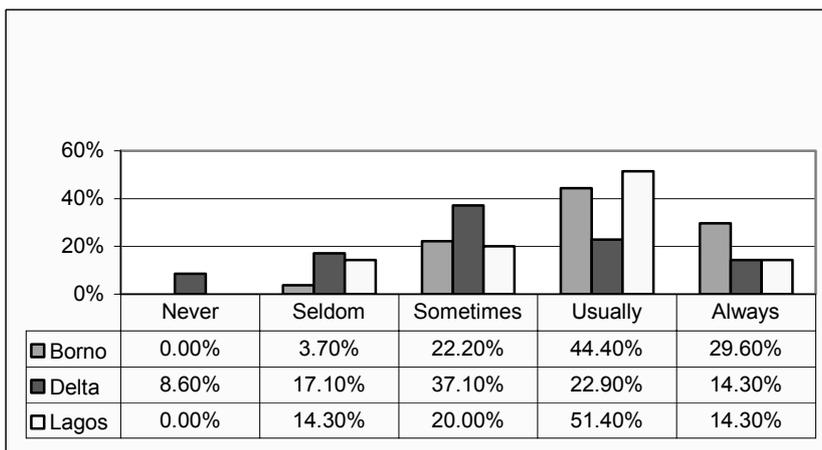
When asked how important they considered the establishment of a maximum time for each procedural step by law, on average 57 per cent of the judges interviewed across the three states agreed that this would be a very beneficial measure.

(b) *Quality*

Not surprisingly, judges generally evaluated the services provided by the courts more positively than court users, lawyers and business people. When asked to assess the competence of their profession on a scale from 1 (never competent) to 5 (always competent), on average in all three states judges agreed that judges were usually competent (see figure 81).

Figure 81

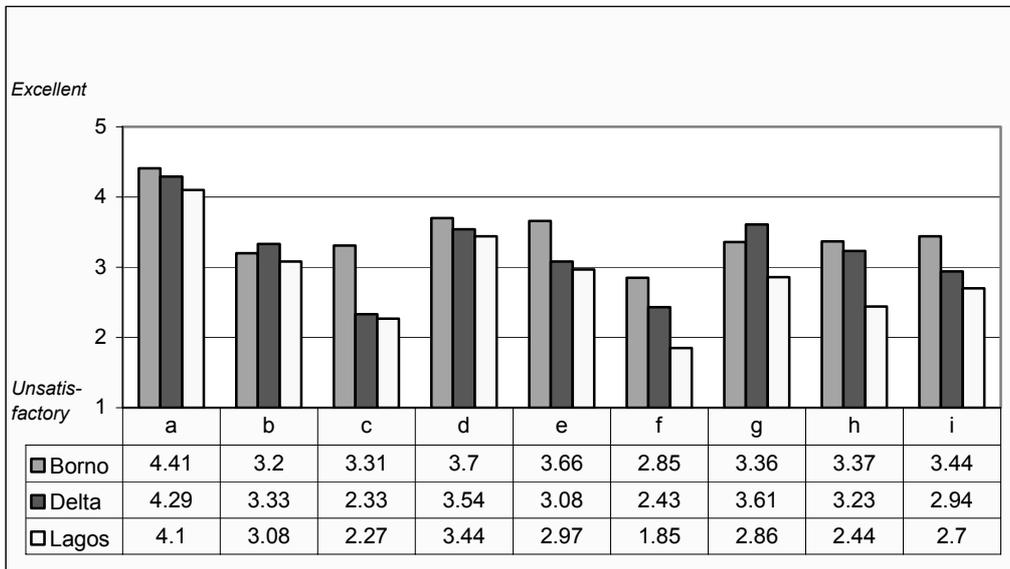
Question to judges: Is your country's justice system competent?



Furthermore, judges were asked to evaluate the quality of the services provided by all the actors in the justice system. On a scale from 1 (unsatisfactory) to 5

(excellent), on average the service provided by judges was evaluated most positively, followed by that provided by private attorneys, public attorneys and court clerks; the service provided by the police, police prosecutors and bailiffs were judged most negatively (see figure 82).

Figure 82
Quality of service provided

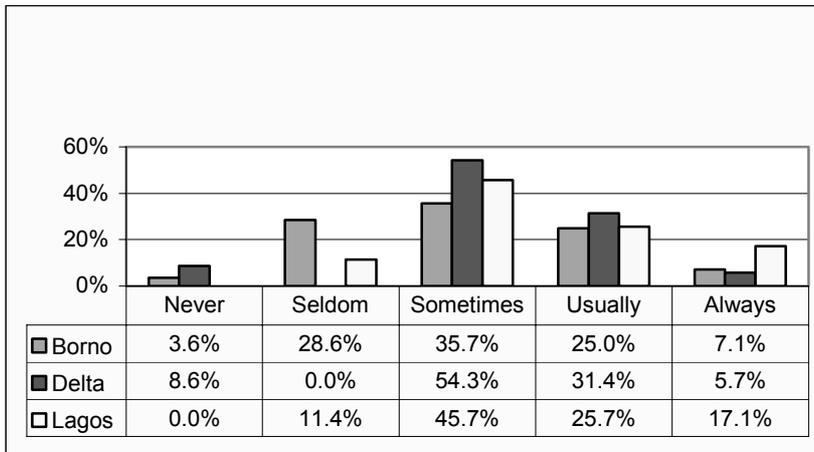


Notes:

- a: Judges
- b: Prosecutors (Ministry of Justice)
- c: Police prosecutors
- d: Private attorneys/notaries
- e: Public attorneys/defenders
- f: Police/constables
- g: Court clerks
- h: Enforcement officials/bailiffs/sheriffs
- i: Prison/jail staff

Enforcement of court decisions greatly affects the perception of the quality of justice delivery. Judges were therefore asked whether they believed that their decisions were enforced. It emerged that 35-40 per cent shared the opinion that court decisions were always or usually enforced, while 35-55 per cent believed that this was only sometimes the case. Particularly preoccupying was the result in Borno state, where more than 30 per cent believed that court decisions were either seldom or never enforced (see figure 83).

Figure 83
Enforcement of decisions emanating from the justice system



The survey also explored the perception of judges with regard to the relevance of merit in judges' appointments. Especially in Borno state, judges agreed that merit and length of service were of great importance for the appointment and career of judicial officers (see figures 84 and 85).

Figure 84
Importance of merit in a judge's career

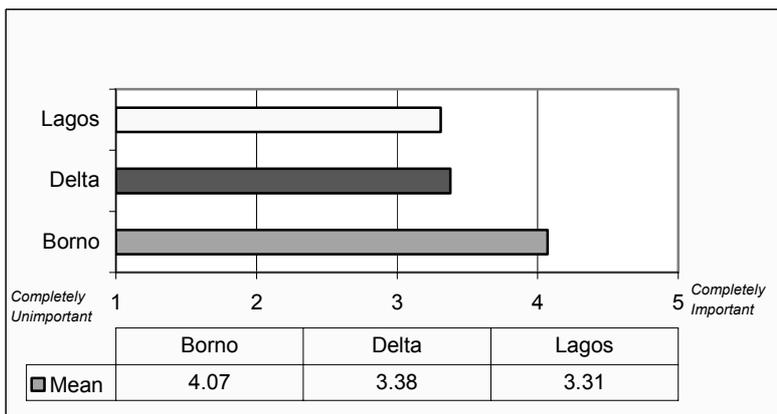
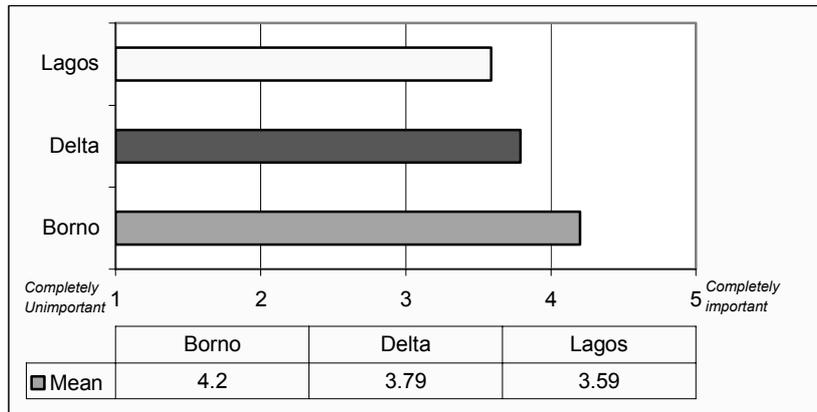


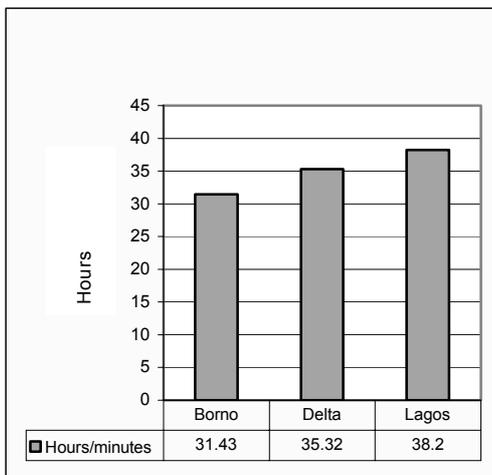
Figure 85
Importance of length of service in a judge's career



Political connections were perceived as less important. However, in Delta and Lagos states, political connections were perceived to be as important as the length of service for appointment to the bench and subsequent career development.

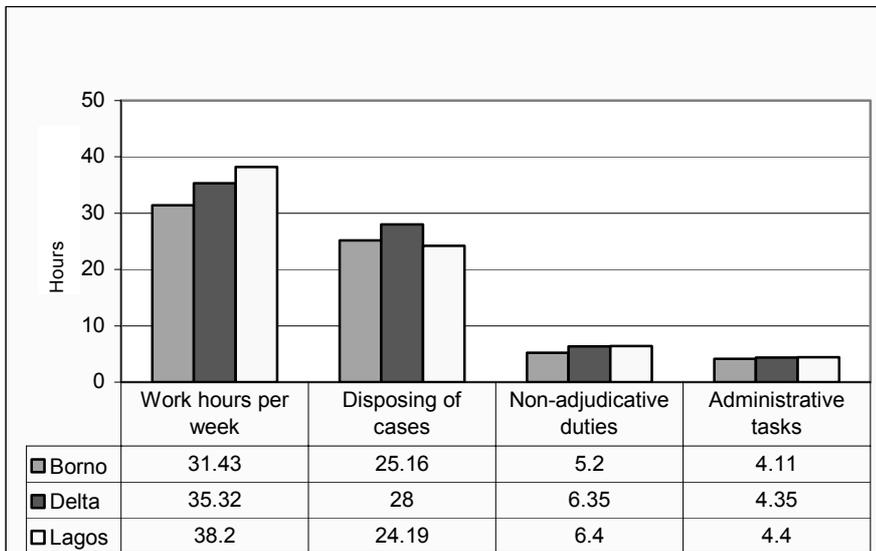
Furthermore, the survey explored the number of hours worked per week by judges. It emerged that judges in Lagos state worked the longest hours, with an average of 38.3 hours per week, followed by Delta state with 35.5 hours per week and Borno state with 31.7 hours per week (see figure 86).

Figure 86
Working hours by judges per week



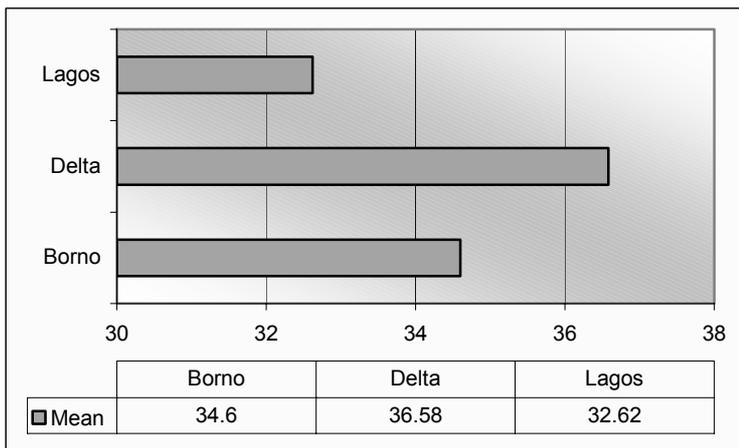
The statistics showed that judges devoted most of their time to the disposing of cases, while relatively little time was used for non-adjudicative or administrative tasks (see figure 87).

Figure 87
Distribution of working time
 (Hours)



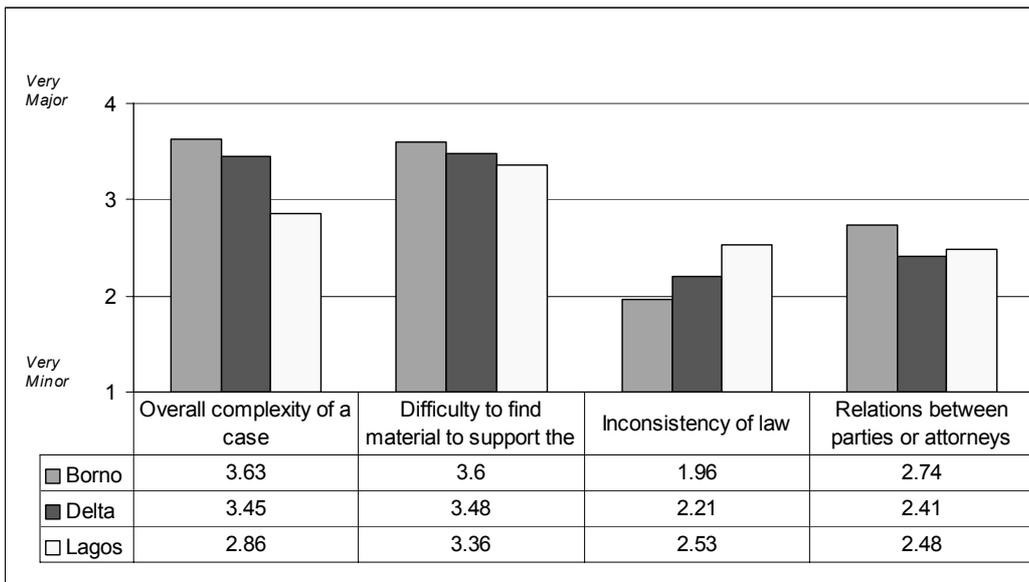
The survey further revealed that judges in Delta state had the highest number of support staff at their disposition (8 support staff per judge, compared with Borno state with 6.32 support staff per judge and Lagos state with 3.38 support staff per judge. On the availability of the support staff to assist the judges in terms of working hours, Delta state again rated higher than the two other states (see figure 88). Regardless of the greater availability of support staff, both in terms of the number of staff per judge and the number of hours they assisted judges, judges in Delta state seemed to spend more time on non-adjudicative and administrative tasks than their colleagues in Borno and Lagos states.

Figure 88
Hours per week worked by support staff



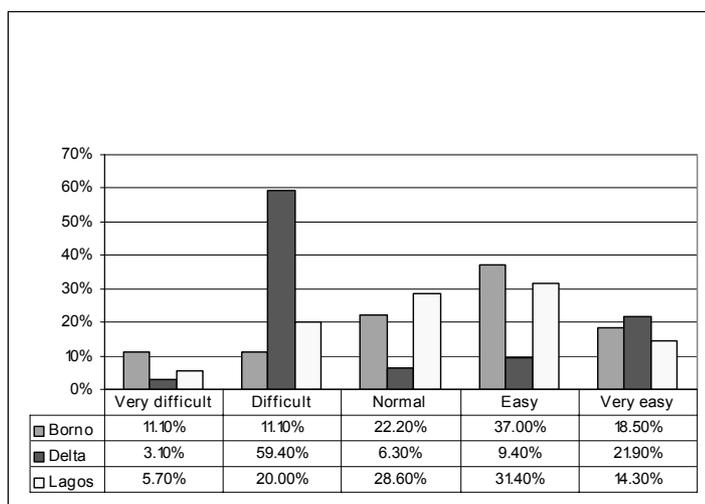
When it came to evaluating the impediments, both to timeliness and to quality of the trial process, judges in all three states essentially agreed that the most serious obstacles were the difficulty to find material to support the case and the overall complexity of the case, while inconsistencies in the law were perceived as a minor problem (see figure 89).

Figure 89
Seriousness of obstacles to the timely delivery of justice



In addition, information management in general seemed to be a problem. About 25 per cent of the respondents in Borno and Lagos states found it very difficult to obtain information from records, while this percentage rose to 62 per cent among the respondents in Delta state (see figure 90). This was further confirmed by 40 per cent of the respondents in Delta state, who evaluated record-keeping as ineffective or very ineffective, while only 30 per cent of the respondents in Lagos state and 21 per cent of those in Borno state shared that opinion.

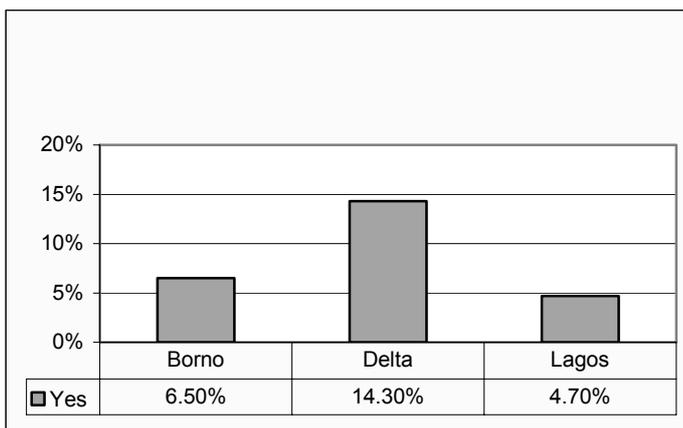
Figure 90
Difficulty in obtaining information from records



The efficiency and effectiveness of the trial process was found to be further hampered by the lack of computers. Particularly surprising was the low level of computerization in the courts in Lagos state (see figure 91).

In addition, the few computers available did not seem to be employed in the most efficient way. For example, less than 4 per cent on average were being used for computer-based case management.

Figure 91
Availability of computers in courts



With regard to case management, the engagement of judges differed significantly across the three states. When asked to characterize the level of judicial management in a typical case, 50 per cent of the judges in Lagos state considered their case-management style as very or somewhat intensive, while in Delta state only 35 per cent and in Borno state only 26 per cent of the respondents shared that opinion (see figure 92). In Borno state, a considerably smaller percentage of judges felt that the level of active case management was appropriate, while 40 per cent spoke in favour of a more active case-management style. In Delta state and Lagos states, only 21.6 per cent and 25 per cent, respectively, felt that the case-management style should be more active (see figure 93).

Figure 92
Question to judges: How intensive would you consider the judicial management?

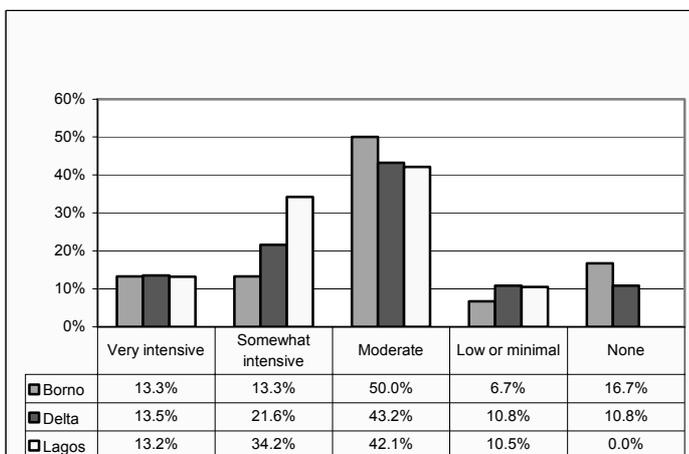
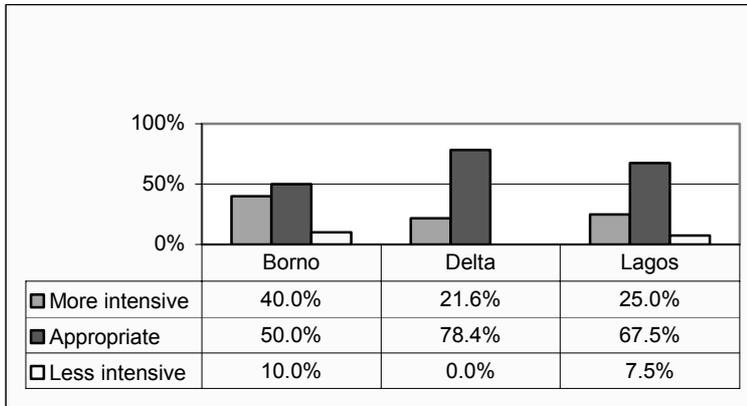


Figure 93

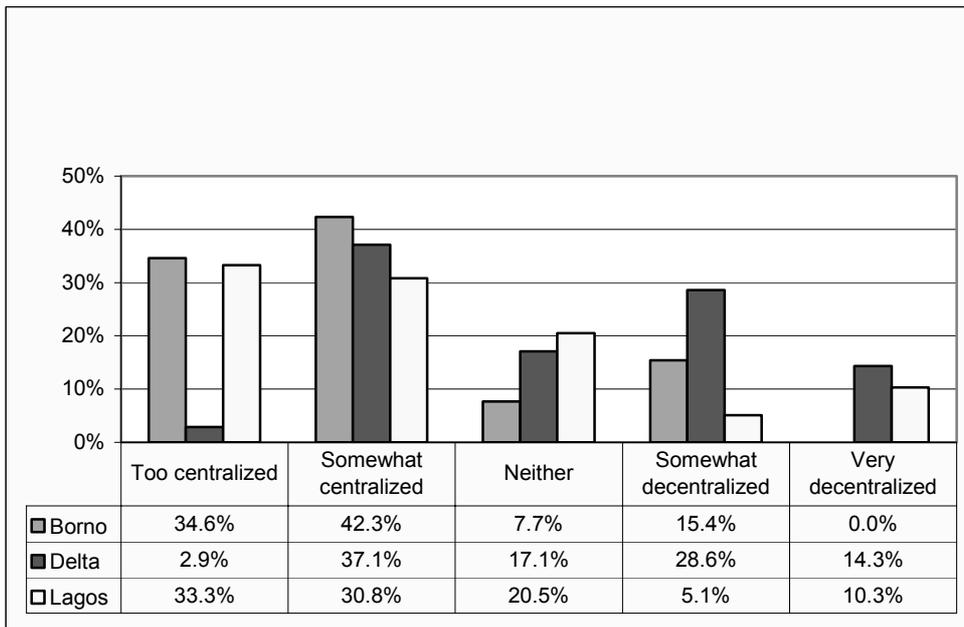
Question to judges: Should the level of judicial management have been more or less intensive?



Judges were also asked to characterize the court administration in their states in terms of centralization. In Lagos and Borno states, respondents were of the opinion that the court administration was overly centralized, while in Delta state, it was not possible to identify a clear trend among the answers given (see figure 94).

Figure 94

Question to judges: How would you characterize the court administrative system prevailing in most first instance courts within your legal jurisdiction?

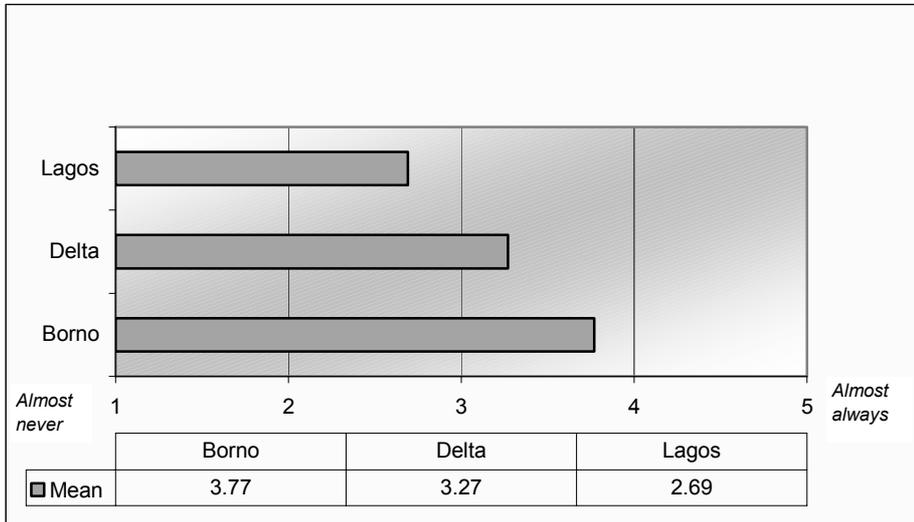


When asked about the frequency with which guidelines, policies and regulations on personnel and budget management were formalized in writing, great differences emerged among the three states. On a scale of 1 (corresponding to almost never) to 5 (corresponding to almost always), Lagos state scored the lowest (2.7), with

budget- and personnel-related guidelines, policies and regulations being published in writing only about half of the time, while Borno state scored 3.8 and Delta state 3.3 (see figure 95).

Figure 95

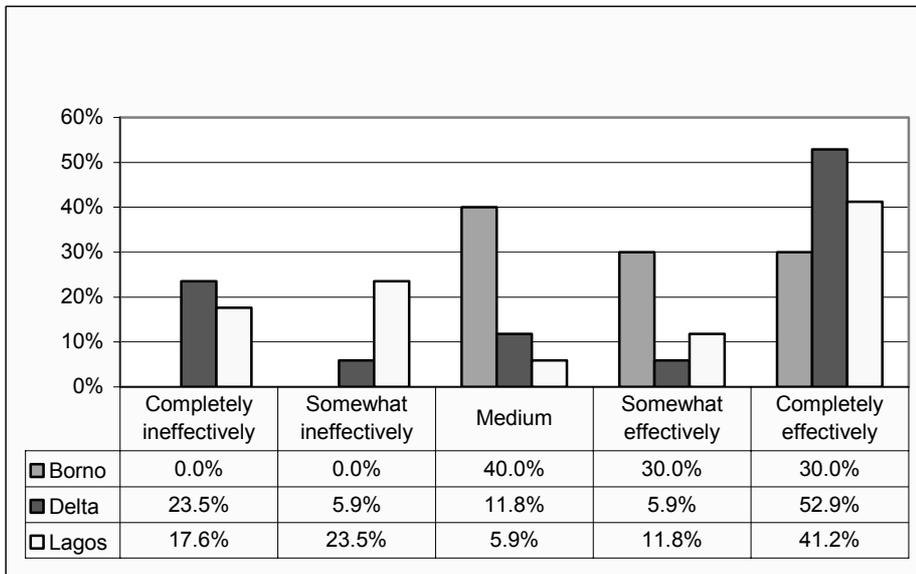
Extent to which guidelines, policies and regulations on personnel management are formalized in writing



As far as financial management was concerned, judges in Borno state seemed the most satisfied. None of the respondents perceived the budget administration as completely ineffective. In Delta state, about 30 per cent and in Lagos state as many as 40 per cent of the respondents considered monitoring and control of budget and expenditure completely or somewhat ineffective (see figure 96).

Figure 96

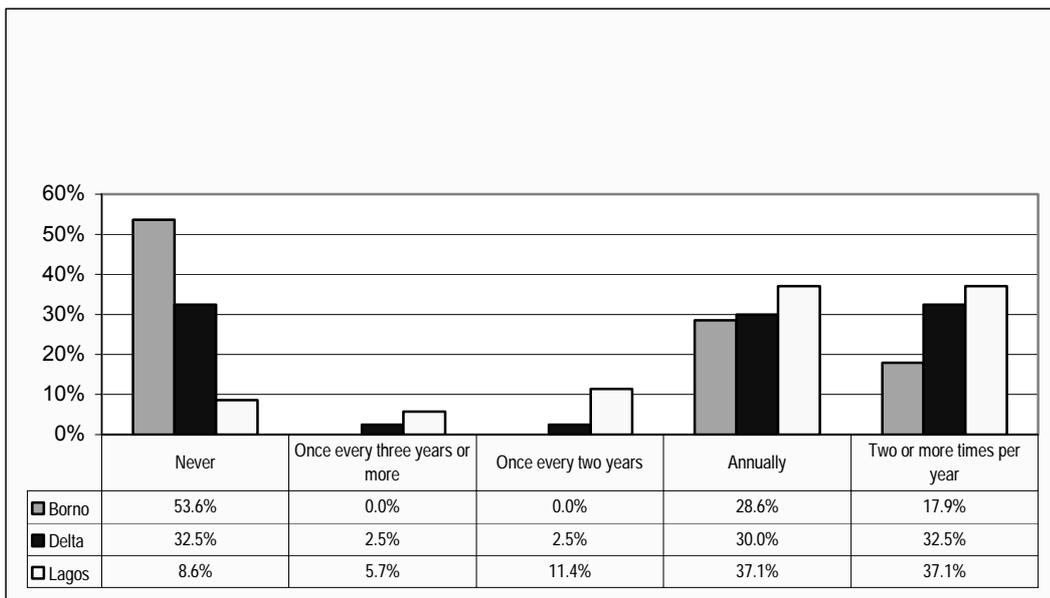
Effectiveness of monitoring and control of budget and expenditure



Judges were also asked to indicate how often their court’s performance was monitored and what aspects were covered. It emerged that the courts in Borno state were the least frequently inspected, followed by Delta state and then Lagos state. More specifically, 54 per cent of the respondents in Borno state claimed that their courts were never inspected. In Lagos state, inspections were found to be much more frequent, with less than 10 per cent of the respondents claiming that their respective courts had never been inspected (see figure 97).

Figure 97

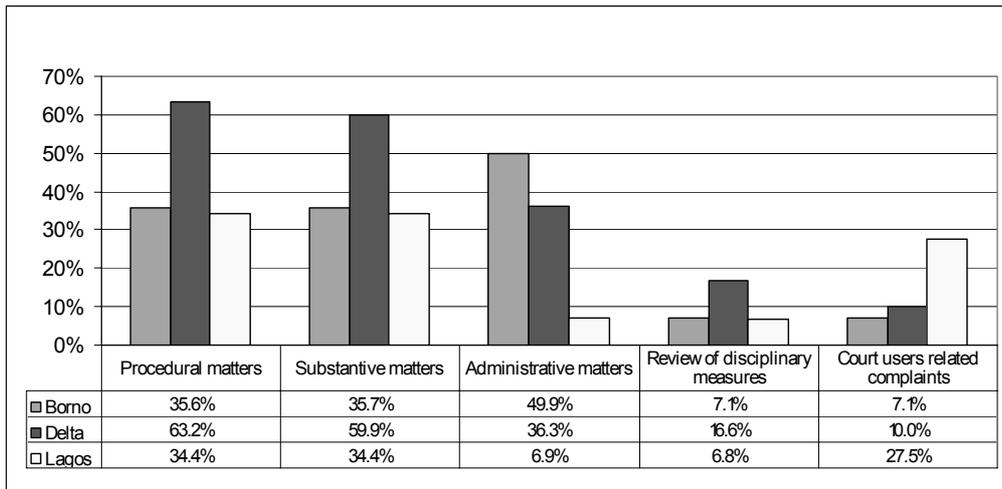
Frequency of formal inspection of court performance



On the rare occasions when courts were monitored in Borno state, the inspections covered mainly administrative matters (50 per cent), and, to a lesser degree, procedural and substantive matters (both 36 per cent). Hardly ever did the inspections cover matters related to court users or disciplinary issues. In Delta and Lagos states, inspections focused mainly on substantive and procedural matters (about 60 per cent of the cases). The courts in Delta and Lagos states were not only more frequently inspected, but inspections also covered a wider range of issues, in particular matters related to court users and disciplinary issues (see figure 98).

Figure 98

Matters covered by court inspections

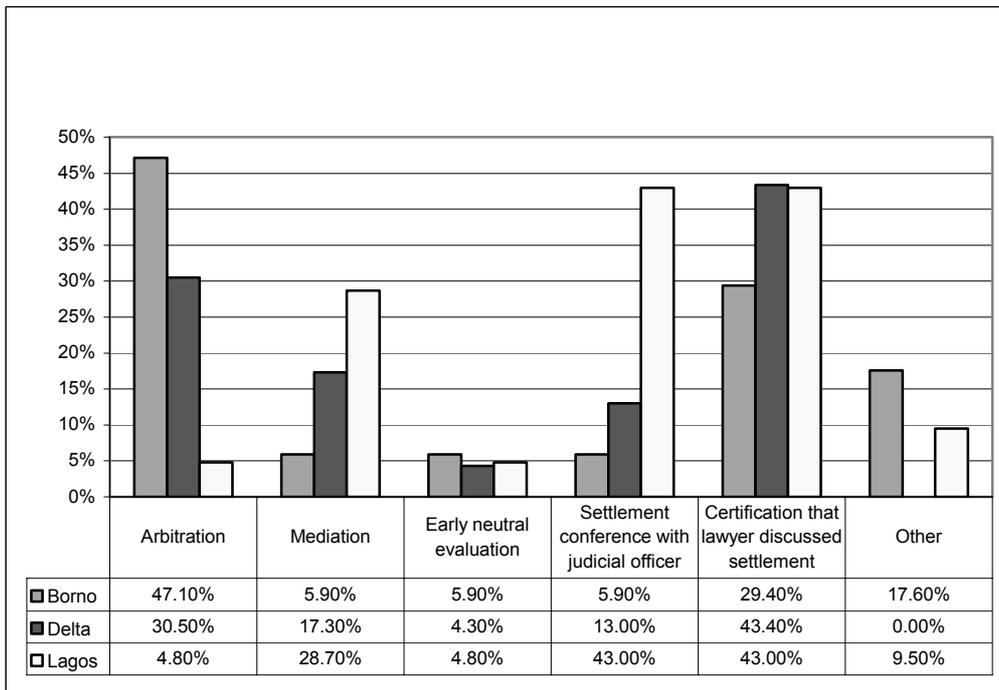


The trend in the frequency of inspections was confirmed by the frequency with which the performance of judges was evaluated in writing. Again, Lagos state appeared to be the only state where evaluations were carried out on a regular basis.

Since alternative dispute resolution is generally considered as an especially effective measure in reducing the case load of the courts and in improving the quality and timeliness of justice delivery, judges were also asked how often and what techniques of alternative dispute resolution they used. It turned out that judges in all three states regularly applied alternative dispute resolution methods. When asked if they used court-related alternative dispute resolution methods, 70 per cent of the respondents in Borno and Delta states responded affirmatively. In Lagos state, the percentage was lower, at 57 per cent. This is understandable, because Lagos state is the only one among the three states with a functioning alternative dispute resolution centre, reducing significantly the need for the judges themselves to apply alternative dispute resolution techniques. The types of alternative dispute resolution method being applied most frequently included certification that the lawyers had discussed the settlement, arbitration, settlement conferences and, to a lesser degree, mediation (see figure 99).

Figure 99

Use of different alternative dispute resolution techniques



2. Lawyers

(a) Timeliness

From the survey of lawyers it emerged that in all three states delays were most frequently experienced before the commencement of trial, in particular when serving a summons on the defendant and during the trial proceeding (see figure 100).

Figure 100

Delays experienced by lawyers, by stage of proceedings

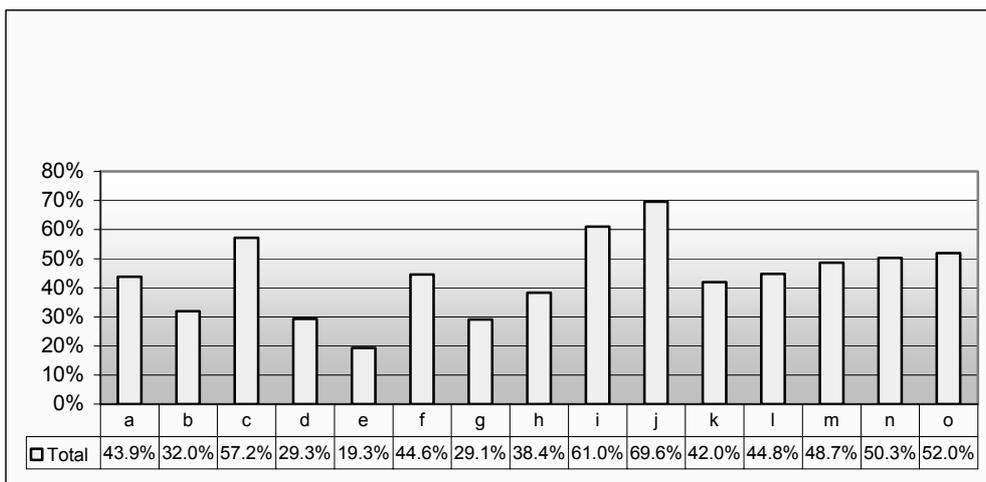
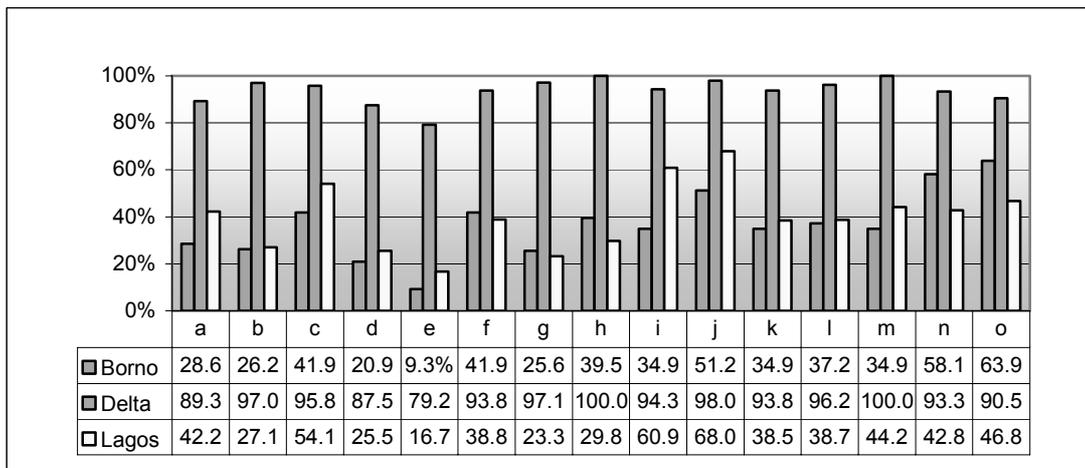


Figure 101
Delays experienced by lawyers, by state and stage of proceedings



Notes

- a: Institution of proceedings
- b: Issue of summons—defendant
- c: Service of summons—defendant
- d: Discovery of documents
- e: Interrogatories
- f: Implementation of bail order
- g: Issue of summons—witness
- h: Service of summons—witness
- i: Commencement of trial
- j: Trial proceedings
- k: Delivery of judgement
- l: Obtaining copy of judgement
- m: Obtaining certified copy of proceedings
- n: Transmission of court records to appeal court
- o: Execution of judgement

When comparing the results in the three states, it emerged that delays were much more frequent in Delta state than in the other two states. Unnecessary delays seemed to be the norm at all stages of the justice delivery process. On average, 90 per cent-100 per cent of the respondents claimed to have experienced undue delays (see figure 101).

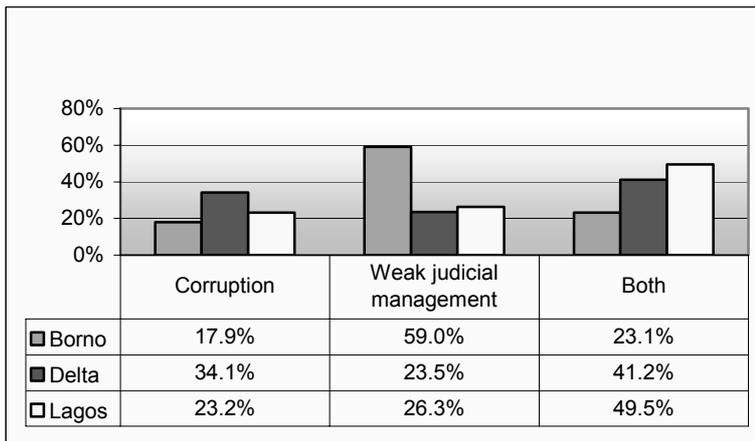
In Lagos state, significant delays were experienced before the commencement of trial (60 per cent) and during the trial proceedings (68 per cent), as well as with the servicing of summons on defendants (54 per cent) and execution of judgements (46 per cent) (see figure 101).

In Borno state, lawyers seemed to experience fewer delays than lawyers in Lagos and Delta states. Particularly few were those respondents who had experienced

delays at the stage of the discovery of documents and interrogatories, while more frequently the transmission of court records to the appeal court (58 per cent) and execution of judgement (over 60 per cent) seemed to be delayed (see figure 101).

When asked to identify the reasons for these delays, the lawyers indicated corruption or weak judicial management, or both, as the major causes (see figure 102). In Lagos state, corruption and weak management were equally responsible for the delays, while in Borno state, the latter was considered a bigger problem.

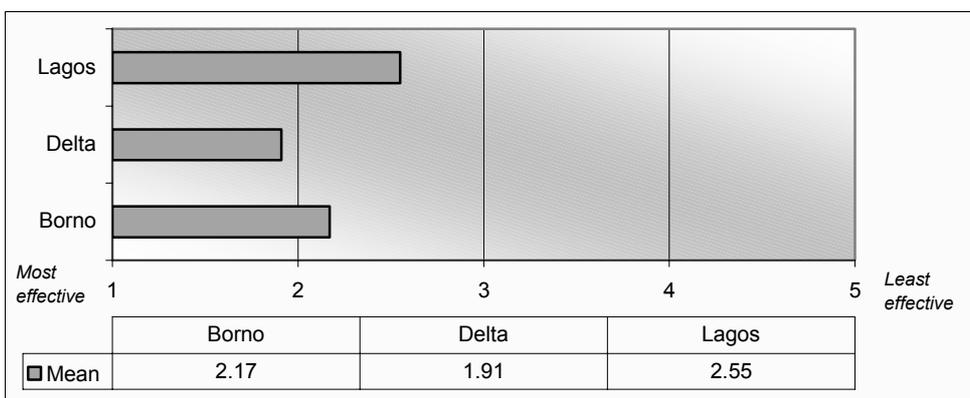
Figure 102
Reason attributed to such delays



(b) Quality

As far as the quality of justice delivery was concerned, the lawyers were asked to evaluate to what extent enhancing accessibility to the existing laws, precedents and other relevant jurisprudence would improve court performance. In particular in Delta state, respondents felt that easier access to legal information would improve court performance (see figure 103).

Figure 103
Question to lawyers: How effective would easier access to laws and relevant jurisprudence be for improving court performance?



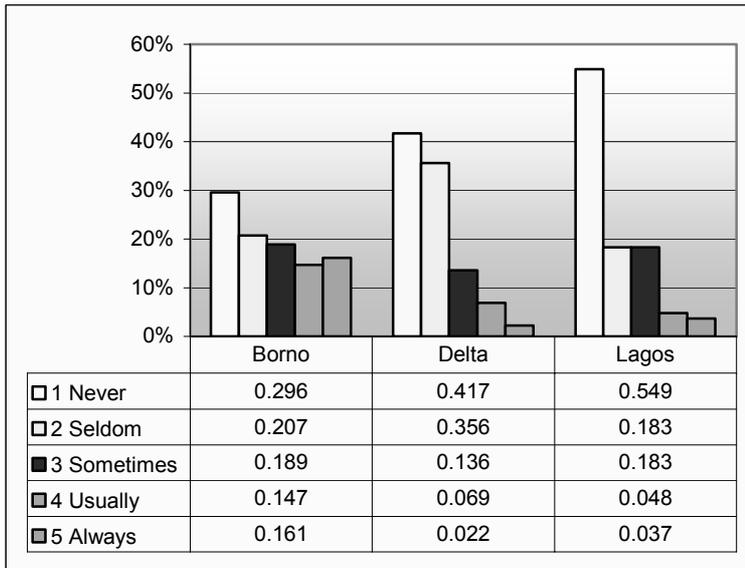
3. Court users

(a) Timeliness

Across the three states, the majority of court users perceived justice delivery to be never or seldom quick, with the situation in Delta state being worse than in Lagos and Borno states. Of the court users in Delta state, 77 per cent considered the justice system to be never or seldom quick, followed by Lagos state with 72 per cent and Borno state with 50 per cent (see figure 104).

Figure 104

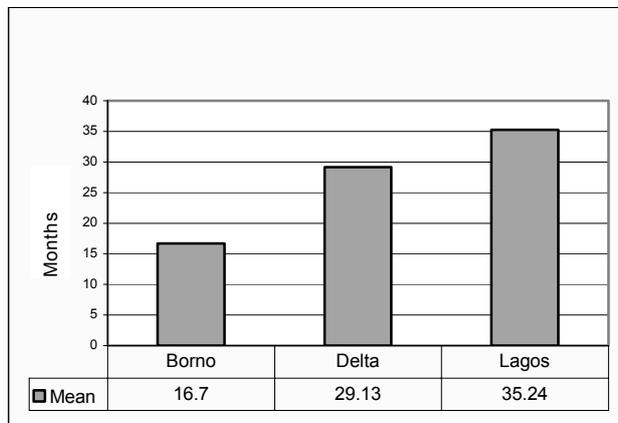
Question to court users: Do you believe your country's justice system to be quick?



The perception of timeliness, or lack hereof, was further confirmed by the experience of the court users. When asked how long it had taken the justice system to resolve the respondents' most recent case, it emerged that, on average, cases in Lagos state took 35.2 months, in Delta state 29.5 months and in Borno state 16.7 months (see figure 105).

Figure 105

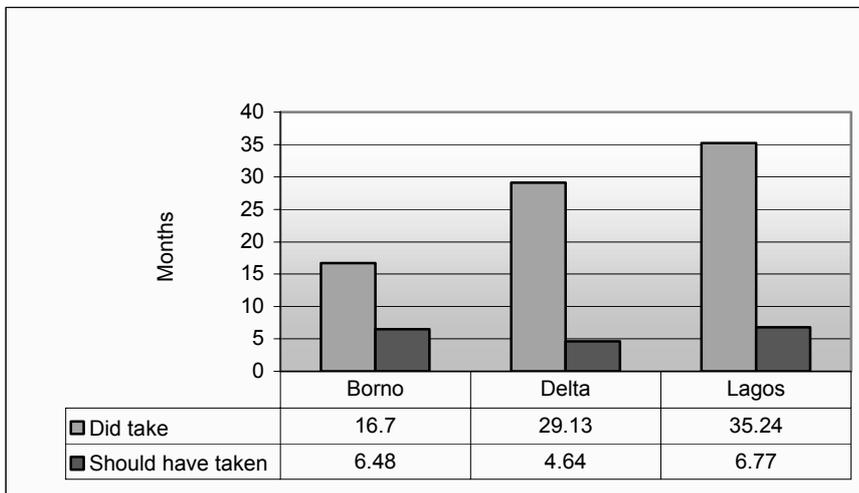
Question to court users: How long did your case take to resolve?



While the delays varied significantly across the three states, the expectations of court users regarding the ideal average duration of a court case were relatively similar across all three states, with an average of six months (see figure 106).

Figure 106

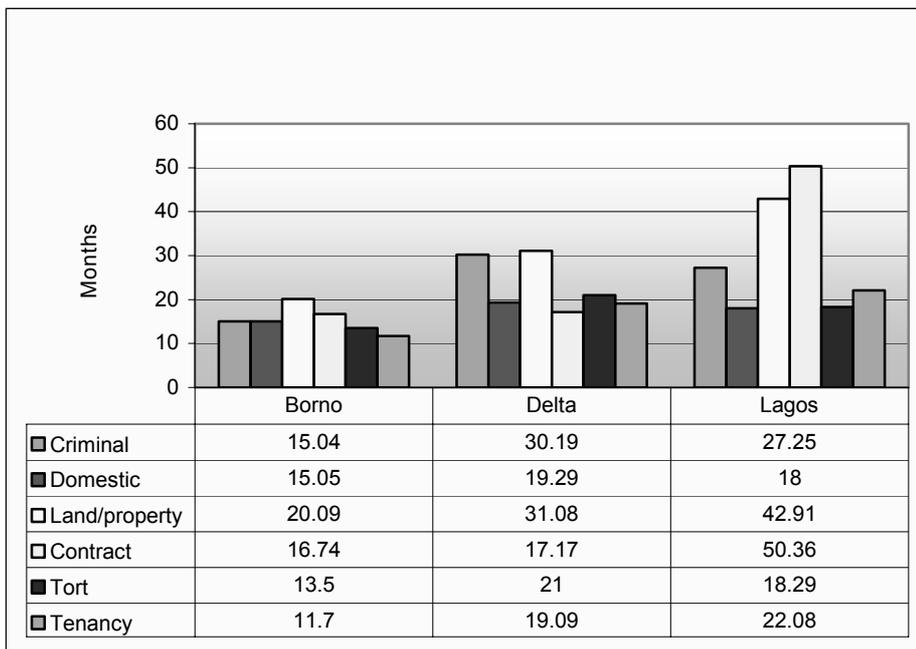
Question to court users: How long did the case take/should the case have taken?



When comparing the issue of delays with other problems affecting the justice system, the length of the process was considered the most important obstacle to using the courts, both in Lagos state (78 per cent) and in Borno state (63 per cent), while in Delta state it was perceived only as the third most serious problem (see figure 107).

The length of trial differed from state to state depending on the type of case (see figure 108). While in Borno state all types of case took between 10 and 20 months, in Delta and Lagos states significant delays could be identified for certain types of case. For example, in Delta state criminal cases and land- and property-related cases took more than 30 months to resolve, while in Lagos state, contract-, land- and property-related cases took up to 50 months. Considerable differences were also identified with regard to criminal cases. While in Borno state criminal cases were concluded relatively quickly, significant delays were experienced in Lagos state and even more so in Delta state, with cases taking almost three times as long (see figure 108).⁶

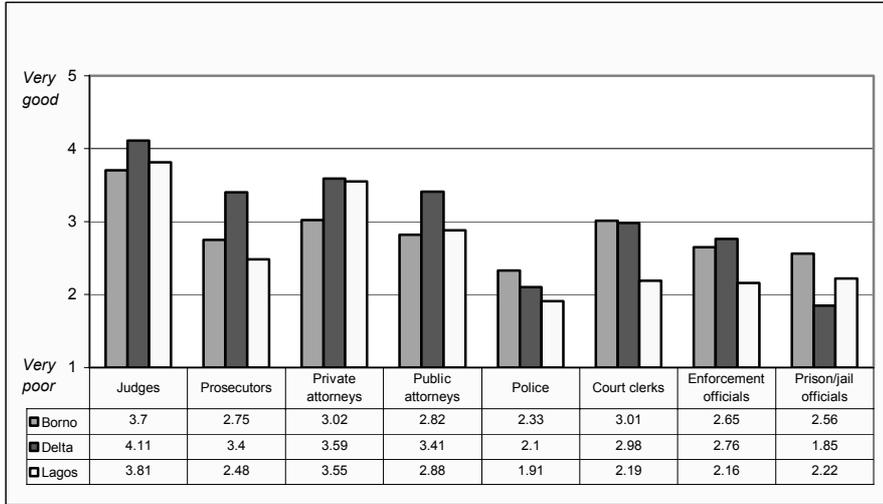
Figure 108
Actual timeliness by nature of the case (court users)



(b) *Quality*

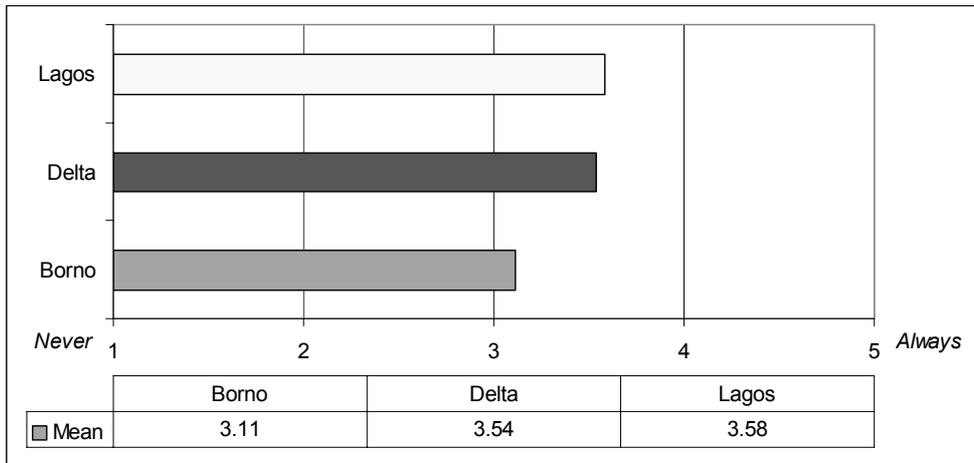
Court users were further asked to evaluate the quality of the services provided by different operators in the justice system, including judges, prosecutors, private and state attorneys, police, court clerks, enforcement officials and prison authorities. On a scale ranging from “very good” to “very poor”, judges received higher scores, followed by private and public attorneys. The services provided by the police and prison personnel were on average evaluated the poorest (see figure 109). Court users in Delta state were in general more appreciative of the quality of services provided, followed by those in Borno state, while court users in Lagos state seemed most critical of their justice sector institutions.

Figure 109
Quality of services provided (court users)



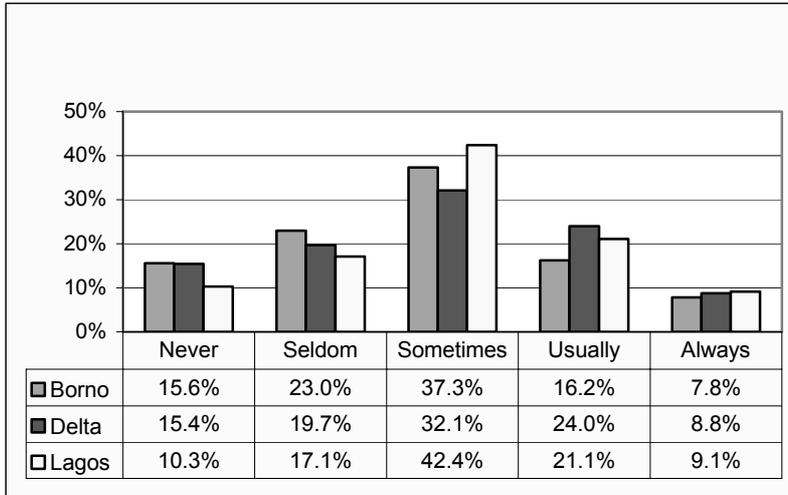
However, when court users were asked to evaluate the competence of judges, the judges in Lagos state were, in the eyes of court users, more competent than their colleagues in Delta or Borno states (see figure 110).

Figure 110
Competency of judges (court users)



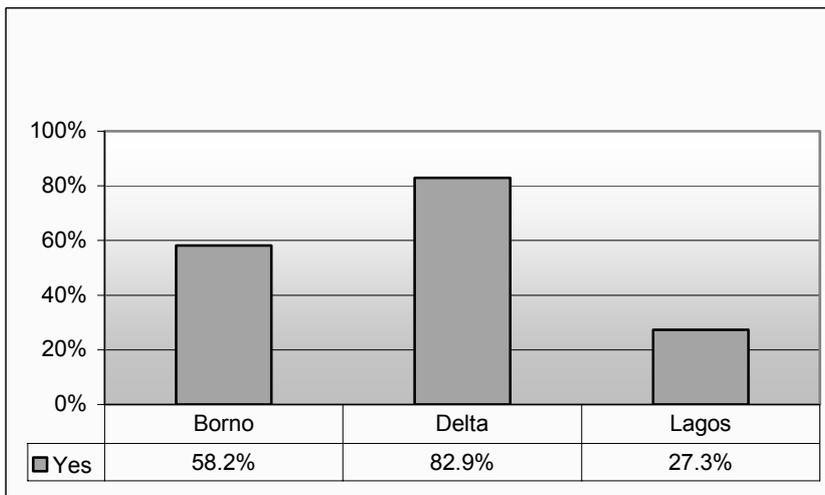
The perceived ability of the justice system to enforce its decisions is another indicator for the quality of the justice system. The responses in this regard did not differ significantly across the states, with most court users believing that the justice system was only sometimes in a position to enforce its decisions (see figure 111).

Figure 111
Capacity of the justice system to enforce court decisions (court users)



However, when asked about their most recent court case, the enforcement ratio in Delta state (83 per cent) was better than in Borno state (58 per cent), and considerably better than in Lagos state, with less than 30 per cent of the judgements having been enforced on the day of the interview (see figure 112).

Figure 112
Enforcement of court decision (court users)



Differences in the enforcement of criminal cases turned out to be less significant. Across all states, the perpetrator had been arrested in about 60-80 per cent of the cases. However, in terms of efficiency, law enforcement proved to be considerably slower in Borno state than in Delta or Lagos states (see figures 113 and 114).

Figure 113

Question to court users: Was the perpetrator arrested?

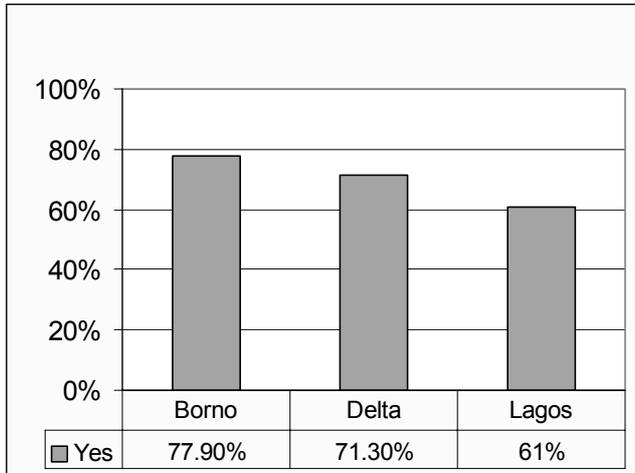
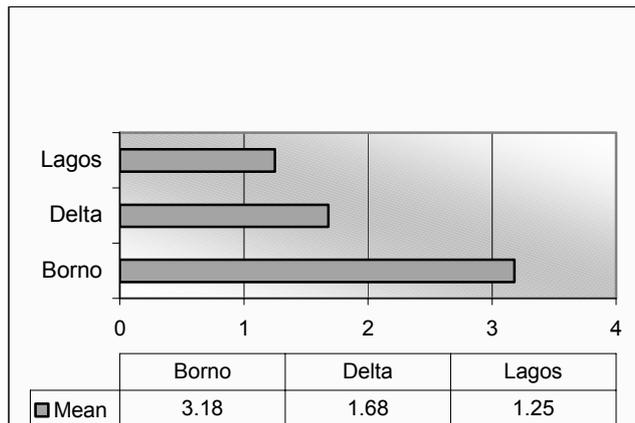


Figure 114

Question to court users: If the perpetrator was arrested, how long did it take from reporting the crime to the time of arrest?

(Months)



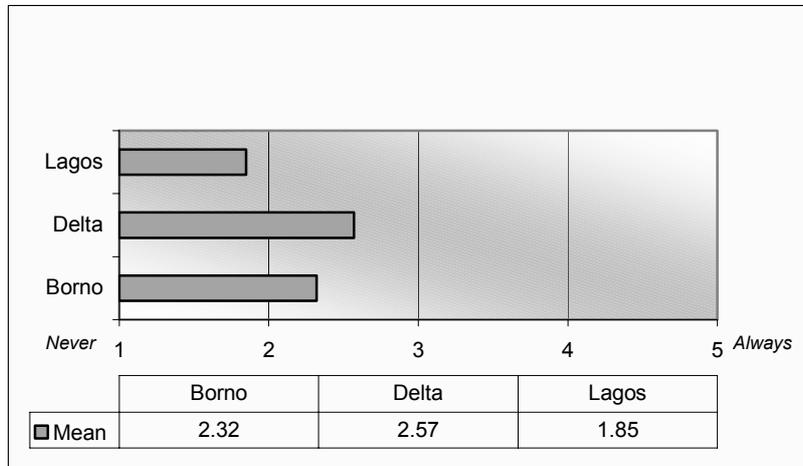
4. Business people

(a) Timeliness

Business people also seemed generally unsatisfied with the time required for the dispensation of justice. More than half of the respondents in Borno and Delta states considered the justice system as never or seldom quick enough, while in Lagos state respondents were even more critical, with more than 75 per cent of respondents sharing this view (see figure 115).

Figure 115

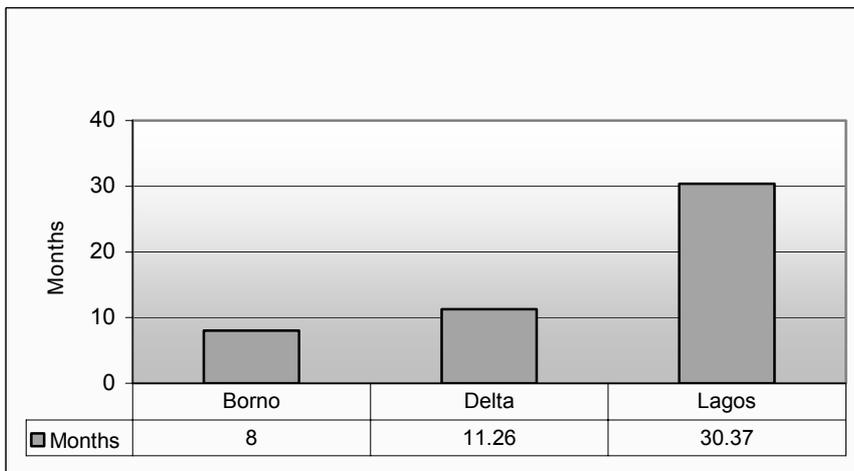
Question to business people: Do you believe your country's justice system to be quick?



These perceptions were confirmed by the experience of business people. When asked how long their most recent court case had taken to resolve, it emerged that, on average, in Lagos state the dispensation of justice in business-related cases took almost three times longer than in the other two states (see figure 116).

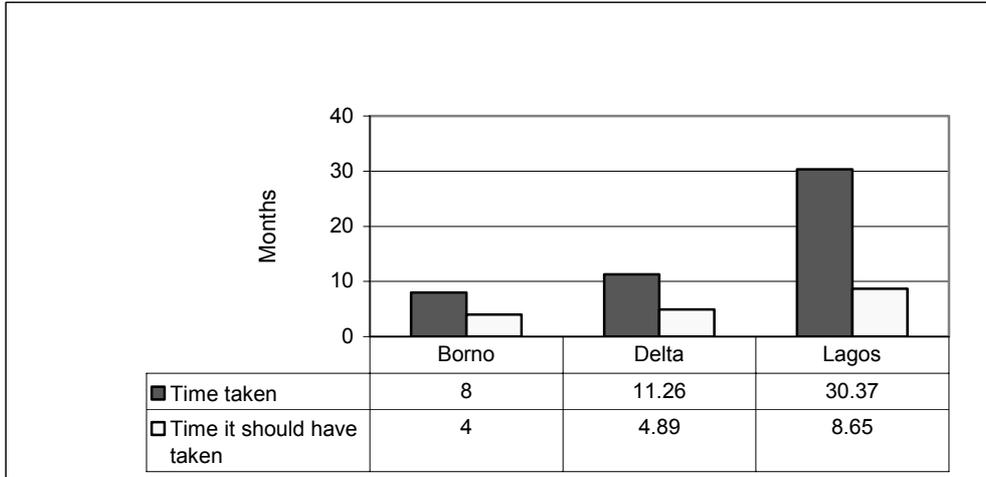
Figure 116

Time taken to render a court decision



However, regardless of the relatively short time cases took to resolve in Borno and Delta states, business people still considered the process of justice delivery as being too lengthy (see figure 117).

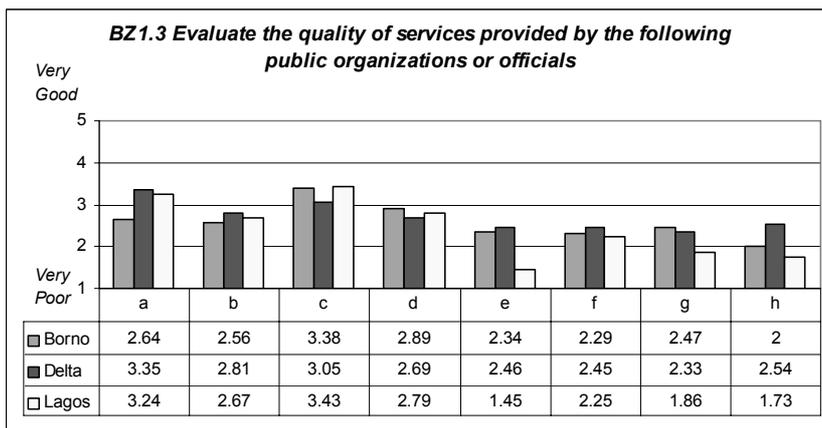
Figure 117
Timeliness of justice process



(b) *Quality*

Business people were also asked to evaluate the quality of the services provided by different operators in the justice system, including judges, prosecutors, private and state attorneys, police, court clerks, enforcement officials and prison authorities. On a scale ranging from “very good” to “very poor”, judges were scored higher, followed by private and public attorneys. The services provided by the police, court staff and prison personnel, on average, were evaluated the poorest. Court users in Delta state were in general more appreciative of the quality of services provided, followed by those in Borno state, while court uses in Lagos state seemed the most critical of their justice sector institutions (see figure 118).

Figure 118
Quality of services provided by the following public organizations or officials (business people)



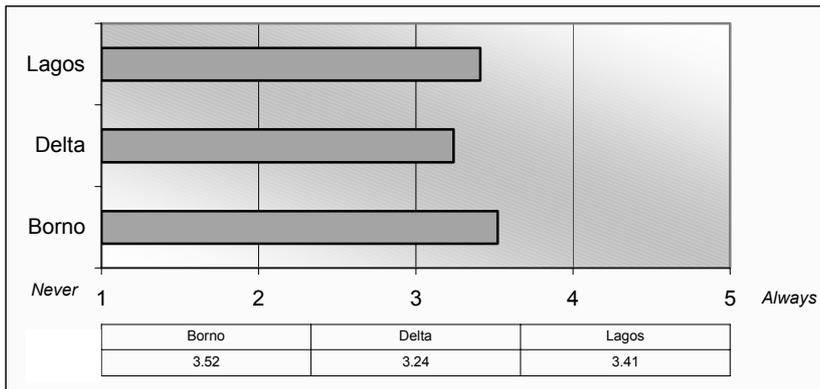
Notes

- a: Judges
- b: Prosecutor
- c: Private attorneys/notaries
- d: Public attorneys/defenders
- e: Police/constables
- f: Court clerks
- g: Enforcement officials/bailiffs/sheriffs
- h: Prison/jail staff

Generally, business people perceived the justice system to be relatively competent (see figure 119). On a scale of 1 (never competent) to 5 (always competent), in all three states respondents scored the country’s justice system between 3 and 4. Approximately half of the respondents across all three states were of the view that their country’s justice system was always or usually competent. When differentiating perceptions according to company size, it emerged that, generally speaking, business people owning larger companies seemed to have a slightly more positive perception of the competence of the justice system.

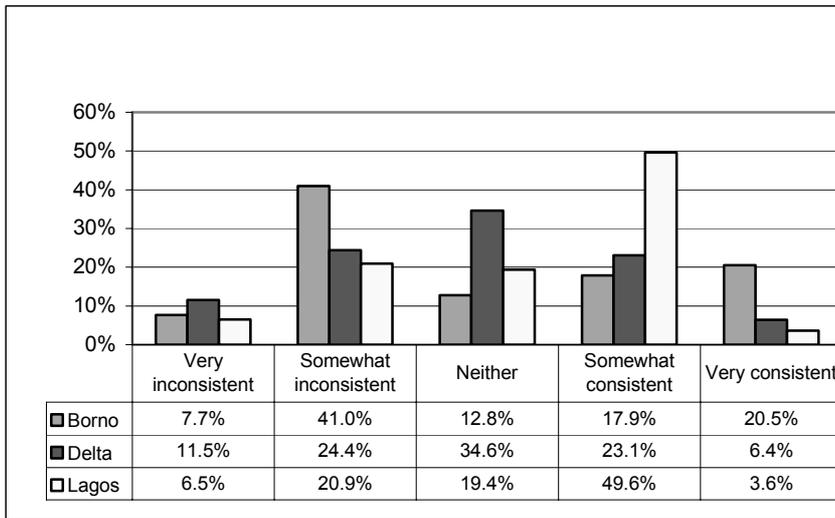
Figure 119

Question to business people: Do you believe your country’s justice system to be competent?



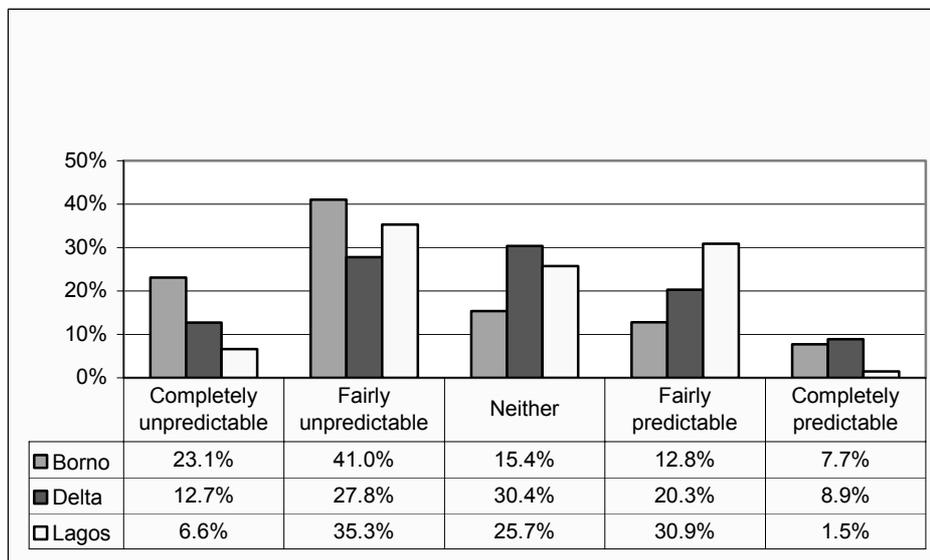
Business people were also asked whether they believed that the laws and regulations and their interpretation by the courts were consistent. Again, results varied significantly among the three states. In Borno state, for instance, 48 per cent of business people believed that there were inconsistencies in the laws and regulations and their interpretation by the courts. In Delta state, 35 per cent of the respondents perceived the laws and regulations and their interpretation as inconsistent, while 30 per cent held a contrary view. In Lagos state, the majority of the respondents found the laws and regulations and their interpretation by the courts were consistent (see figure 120).

Figure 120
Consistency of laws and regulations and their interpretation by courts (business people)



The perceptions of business people with regard to the predictability of changes in laws affecting their businesses varied from state to state. In Borno state, 65 per cent of the respondents were of the view that changes in the law were unpredictable, while in Delta and Lagos states only 40 per cent of the respondents shared this opinion (see figure 121).

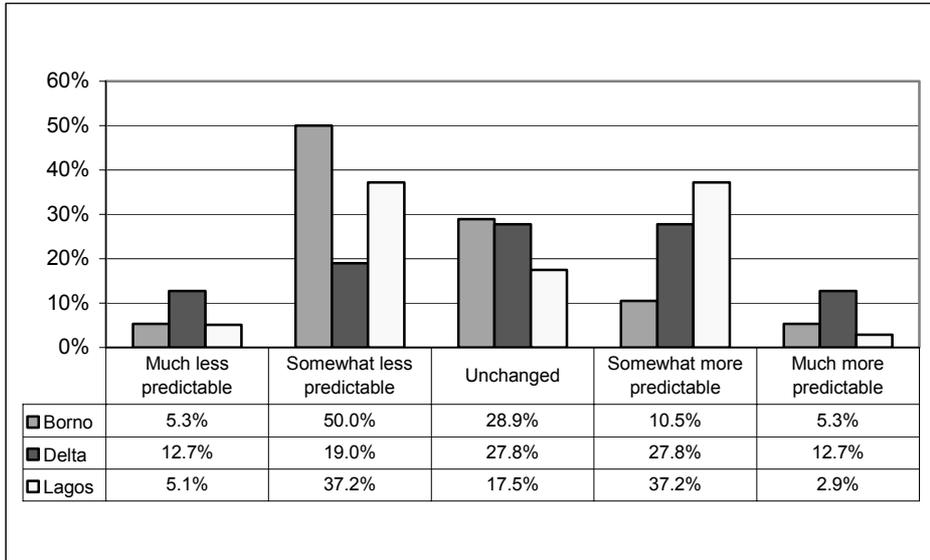
Figure 121
Predictability of changes in laws and regulations (business people)



Furthermore, 55 per cent of the respondents in Borno state believed that legislative changes and policies affecting their businesses had become less predictable in the previous three years. Only 32 per cent in Delta state and 40 per cent of the respondents in Lagos state held a similar view (see figure 122).

Figure 122

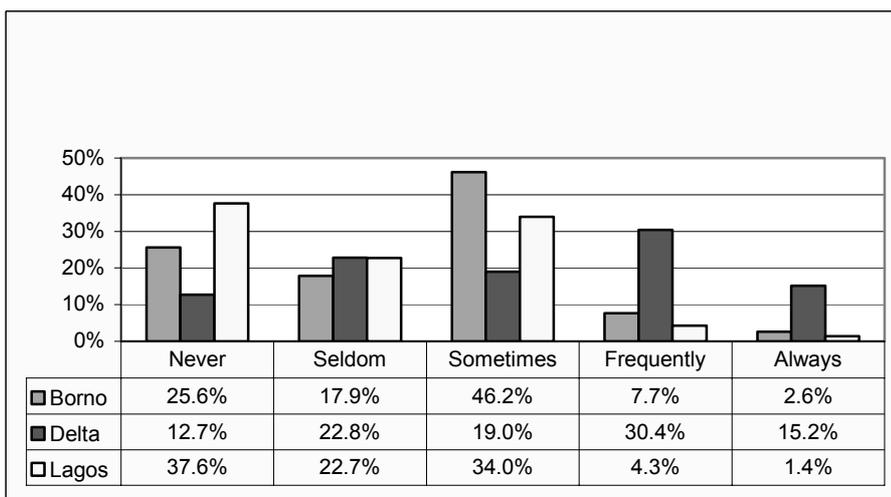
Changes in predictability of laws, policies or regulations affecting business over previous three years (business people)



Business people expressed dismay over the lack of consultation in the legislative process affecting their business. In Delta state, for example, about 34 per cent of the respondents declared that the Government did not consider their inputs in law-making, while in Borno and Lagos states, 43 per cent and 60 per cent, respectively, shared that opinion (see figure 123).

Figure 123

Government consideration of the opinion of business people when changing the law

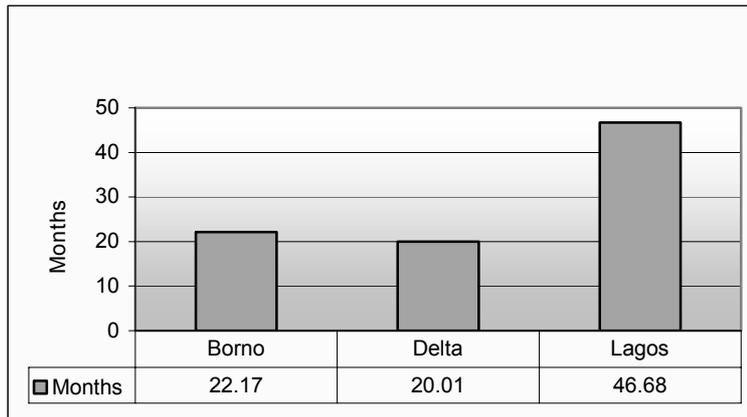


5. Prisoners awaiting trial

When asked about their experience regarding the timeliness of the justice system, the delays experienced by prisoners awaiting trial seemed even more significant than those experienced by other court users. In Lagos state, on average, prisoners had spent 47 months in remand without their trial being concluded. In Delta and Borno states, on the day of the interview respondents had been expecting final judgement for 20 and 22 months respectively (see figure 124).

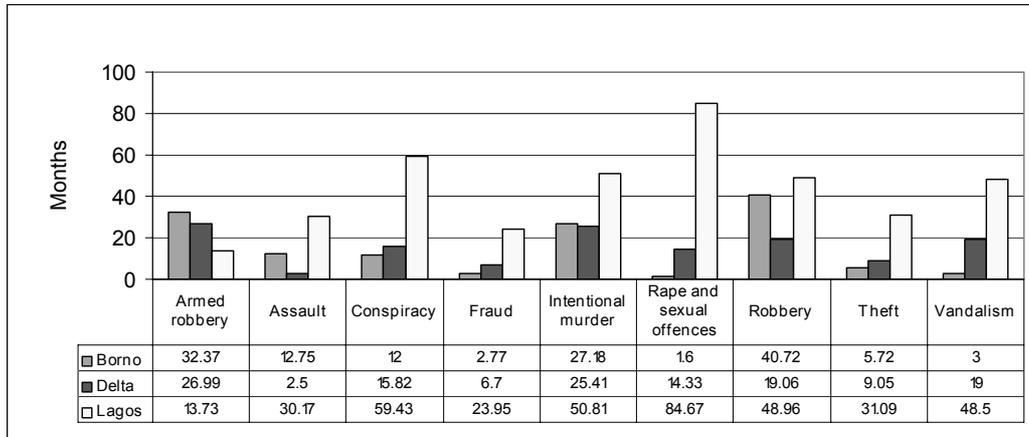
Figure 124

Time in remand



The months in remand further differed according to the type of crime. While in Lagos state, the time spent in remand was the longest for all crimes except armed robbery, significant differences emerged with regard to rape and sexual offences, as well as some of the less serious offences, such as vandalism, theft, conspiracy and fraud. While in some cases (for example, in the case of rape and sexual offences) this might have been because of cultural differences, in other cases such differences in the punitive attitude towards certain less serious offences did not seem to be explicable, let alone justifiable. With regard to the less serious offences, this finding raises the question of whether there are significantly different policies among the three states when it comes to granting bail (see figure 125).

Figure 125
Time in remand, by type of offence



D. Trust in the justice system

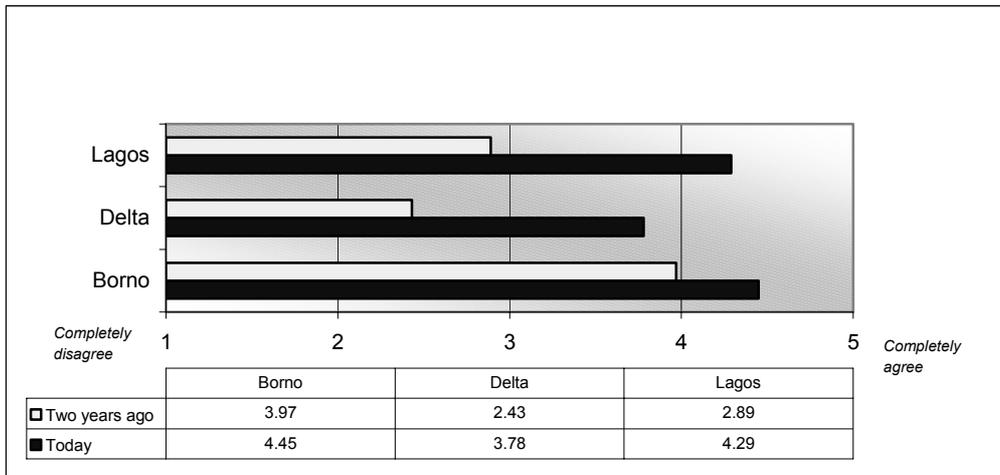
Judges, court users and business people were further asked various questions concerning their trust in the justice system's ability to uphold the civil rights of citizens, including their contractual and property rights, and to support private sector development in a free market environment.

1. Judges

When asked if they were confident that the justice system was able to uphold citizens' civil rights, including contract and property rights, judges generally responded affirmatively. In Borno and Lagos states, judges either completely or somewhat agreed, while respondents in Delta state mostly somewhat agreed. When asked whether their confidence had changed during the previous two years, the results revealed a significant increase of trust in the system in all three states (see figure 126).

Figure 126

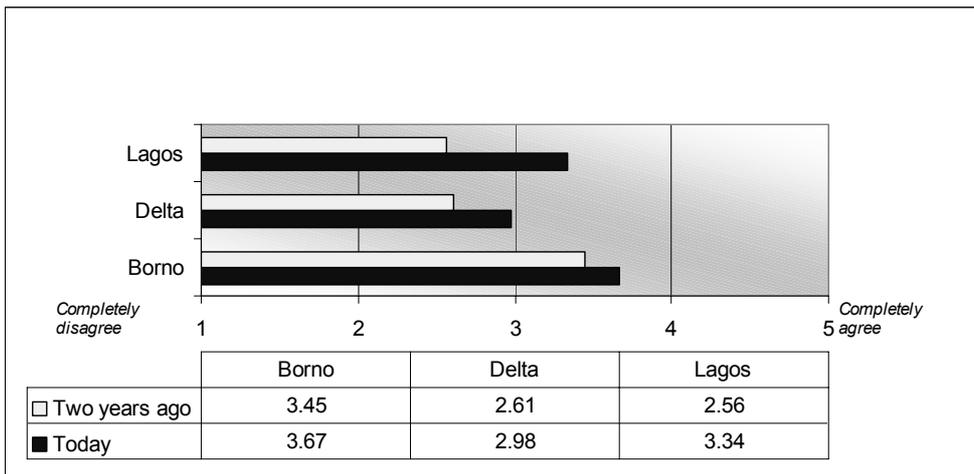
Confidence in the ability of the justice system to uphold civil rights (judges)



The results are less encouraging with regard to the perception of judges concerning the capacity of the justice system to deal with crime, in particular to punish criminals and guarantee the safety of lives and property. In Delta state, respondents were rather sceptical about the capacity of the justice system. In Borno state, and to a lesser degree in Lagos state, respondents were more confident that the justice system was in a position to confront crime effectively. Respondents were also asked about their level of confidence two years prior to the interview. In all three states, respondents agreed that the crime control situation had slightly improved (see figure 127).

Figure 127

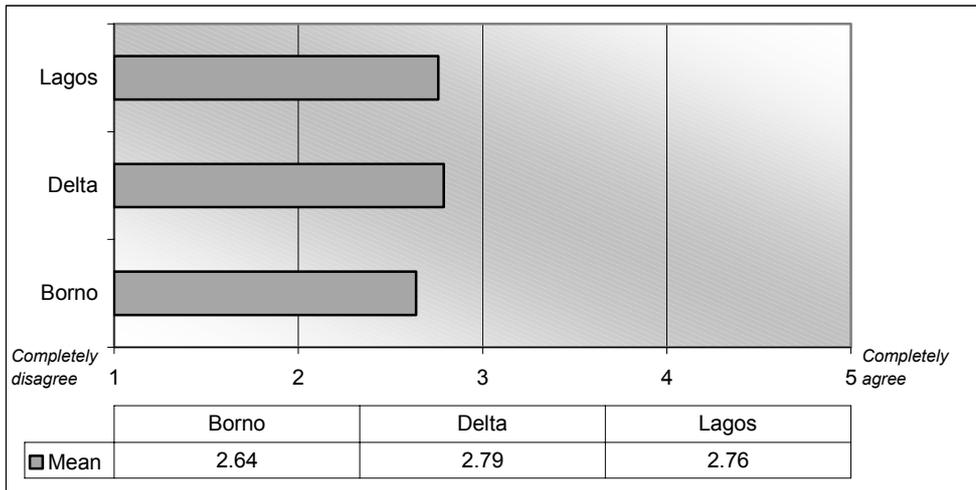
Confidence in the ability of the justice system to punish criminals and protect business from the effects of crime (judges)



In addition, respondents were asked to evaluate the effectiveness and efficiency of the justice system in supporting a modern economy. There was a shared scepticism across all three states, with the average ranking around 2.7 on a scale from 1 (completely disagree) to 5 (completely agree) (see figure 128).

Figure 128

Confidence in the ability of the justice system to support a modern economy and the private sector effectively and efficiently (judges)

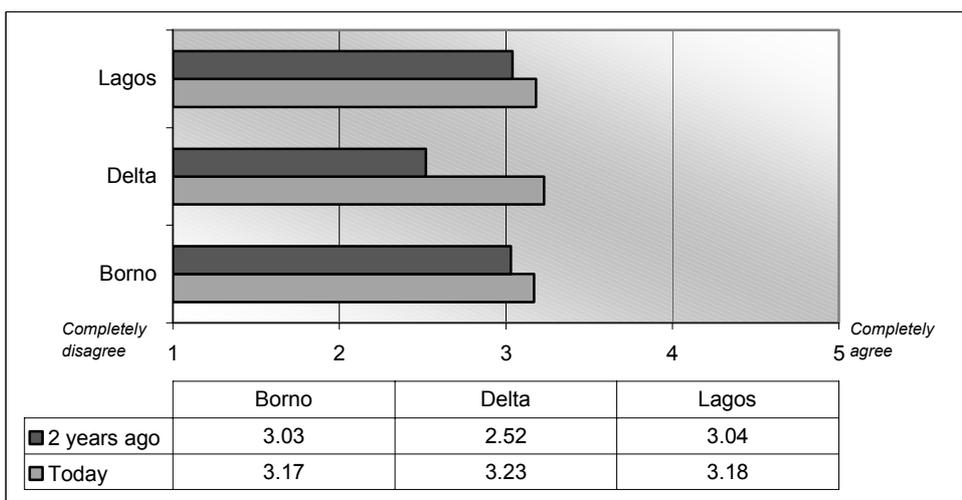


2. Court users

When asked about their opinions concerning the justice system’s ability to uphold their civil rights, court users were less confident than the judges; however, on average, they were still slightly positive in their assessment. Moreover, they agreed that the justice system’s ability in this regard had improved during the previous two years (see figure 129).

Figure 129

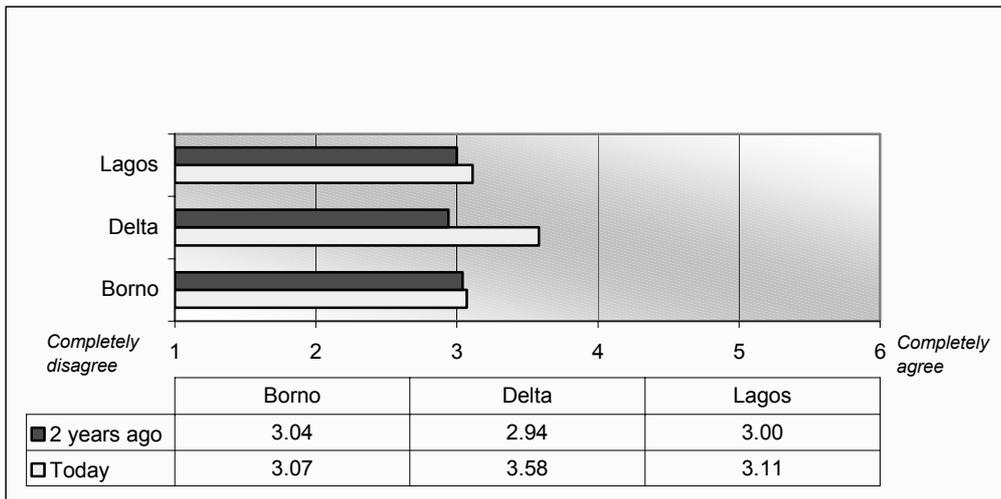
Confidence in the ability of the justice system to uphold civil rights (court users)



On the justice system's ability to confront crime, court users largely confirmed the perceptions of judges. It is interesting to observe that court users in Lagos and Delta states had a slightly more positive view of the justice system's ability to punish criminals and protect businesses from the adverse effects of crime (see figure 130).

Figure 130

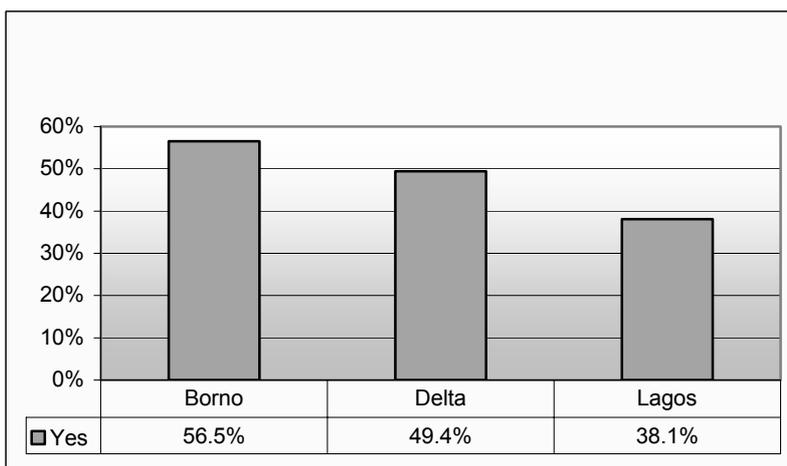
Confidence in the ability of the justice system to punish criminals and protect households from crime (court users)



An important indicator for the trust of the public in the justice system is the readiness of citizens to file a complaint against the Government in court. It emerged that, out of the 20-25 per cent of the respondents who had a complaint against the Government, an average of 40-50 per cent had filed a court case, with court users in Borno state being generally more willing to use formal litigation (see figure 131).

Figure 131

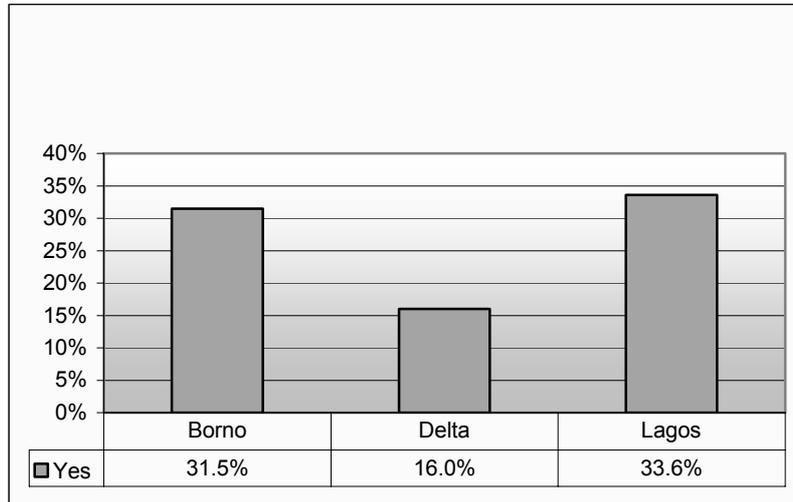
Court users with a complaint against the Government who had formally litigated or challenged the Government in court



In Lagos and Borno states, in the majority of cases in which complainants refrained from filing a formal complaint in court, they did not then seek any other solution, while in Delta state, court users appeared more likely to seek unofficial solutions to their complaints against the Government (see figure 132).

Figure 132

Court users with a complaint against the Government who sought an unofficial solution to their complaint

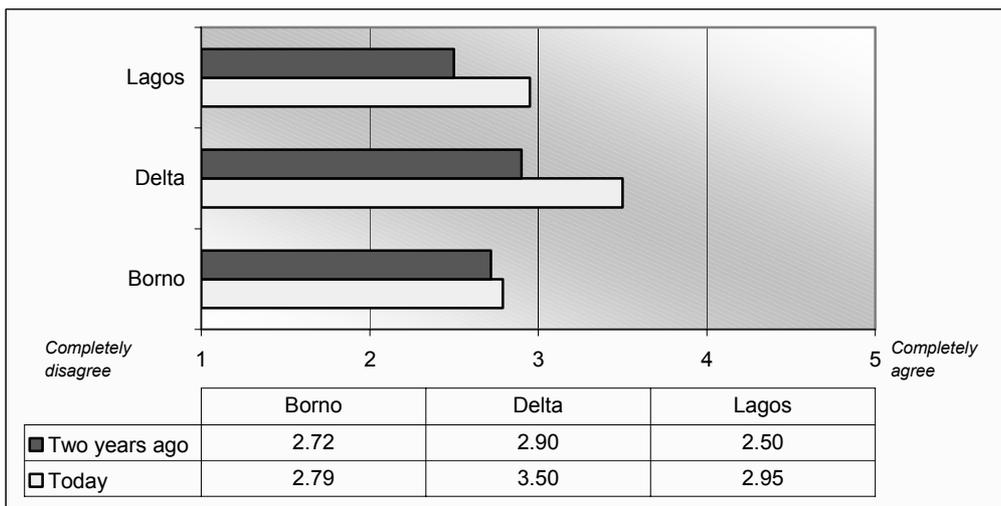


3. Business people

Business people were asked about their opinions concerning the ability of the justice system to uphold the civil rights of the country's citizens. Again, opinions in Delta state were slightly more positive than in the other two states and in all the three states the trust level had improved compared to two years before the interview.

Figure 133

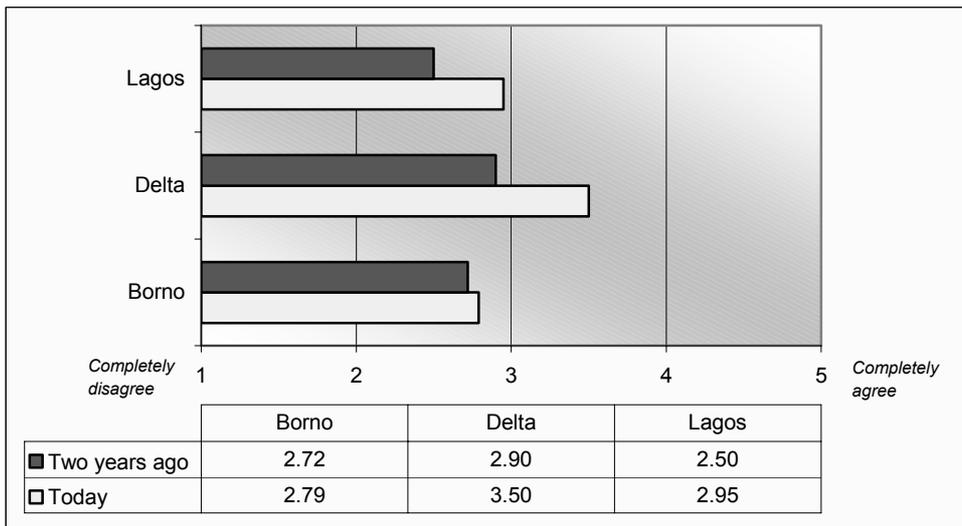
Confidence in the ability of the justice system to uphold civil rights (business people)



Furthermore, when asked about the perceived capability of the justice system to protect businesses against crime, respondents rated Delta state slightly better than Lagos and Borno states. However, when comparing the situation as perceived at the time of the interview with the situation of two years previously, significant improvements had occurred in all three states (see figure 134).

Figure 134

Confidence in the ability of the justice system to punish criminals and protect business from crime (business people)



In addition, business people were asked whether they believed that the justice system was able to enforce its decisions. In this regard, the trust level varied significantly across both respondents and states. In Delta state, 42 per cent of the respondents believed that the justice system was never or seldom able to enforce its decisions, while 46 per cent believed that the justice system was usually or always able to enforce its decisions. In Borno state, 50 per cent of the respondents believed that the justice system was usually or always able to enforce its decisions. In Lagos state, the majority of the business people interviewed considered the justice system capable of enforcing its decisions, while only 30 per cent were sceptical (see figure 135).

Notes

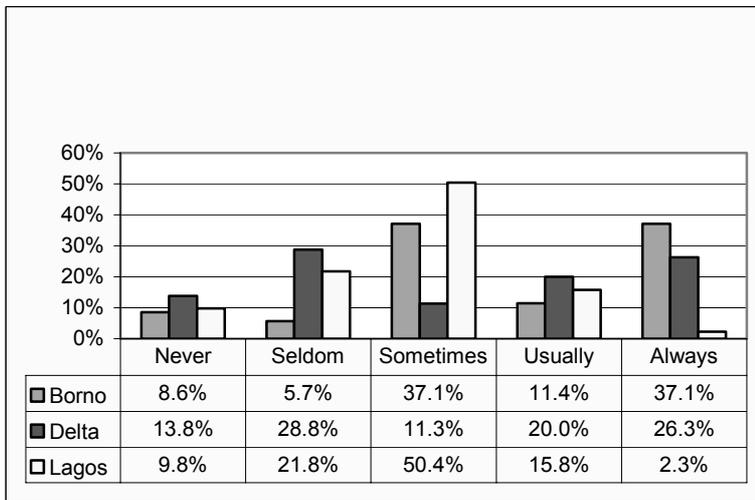
- ¹ All the figures indicated in the text refer to the number of respondents to a specific question unless otherwise indicated.
- ² As Lagos is a cosmopolitan city, informal avenues for resolving conflict with neighbours are rare, since they probably belong to different ethnic groups, religions or tribes.
- ³ The market exchange rate on 2 May 2002 was 1 US\$ to 129.752 naira.
- ⁴ The sample was divided into five classes according to the number of employees, with the classes defined to achieve a normal distribution within the sample. Very small companies are those with 4 or less employees; small companies have between 4 and 10 employees, medium companies

have between 10 and 30, large companies have between 30 and 700, while very large companies have more than 700 employees.

- ⁵ The complexity of the reporting process involves, inter alia, the proximity to the police station or court and the preliminary interrogation that the complainant might be subjected to. Sometimes this could be a disincentive for reporting crime cases.
- ⁶ As pointed out earlier, official statistics suggest that there is more reported crime in Lagos than in other parts of Nigeria (see Nigeria police monthly and quarterly crime reports, published by the Federal Office of Statistics, Abuja, 2003).

Figure 135

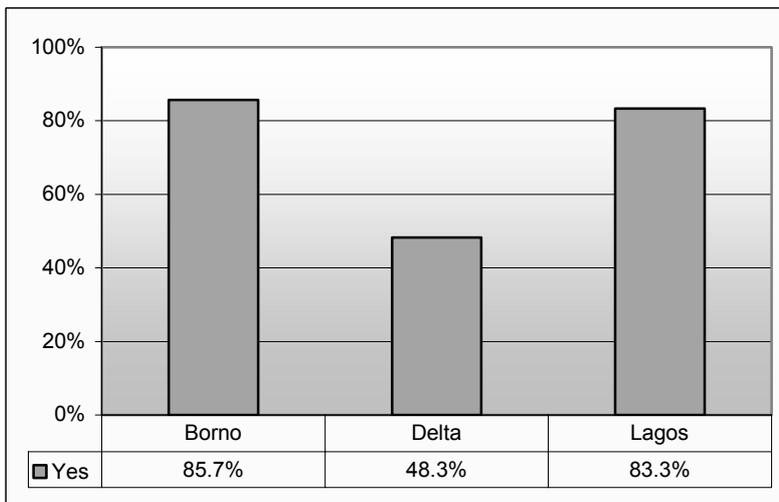
Confidence in the ability of the justice system to enforce court decisions (business people)



The survey explored the experience of business people in this context further. In Borno and Lagos states, 85 per cent of the respondents claimed that the judgement in their last court case had been enforced, while in Delta state apparently only 50 per cent of the judgements had been enforced (see figure 136).

Figure 136

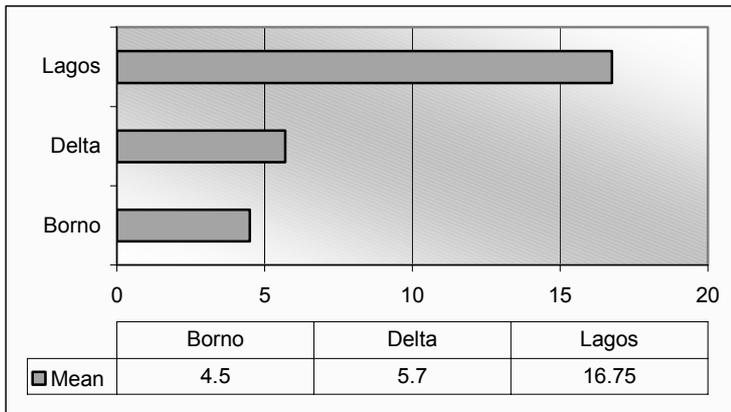
Enforcement of judgements



When asked how long it had taken to enforce the judgements, it emerged that the justice system in Borno state had performed better than in Delta and, especially, in Lagos states, where it took almost four times longer than in Borno state to enforce the courts' decisions (see figure 137).

Figure 137

Time taken to enforce court decisions
(months)



E. Independence, fairness and impartiality

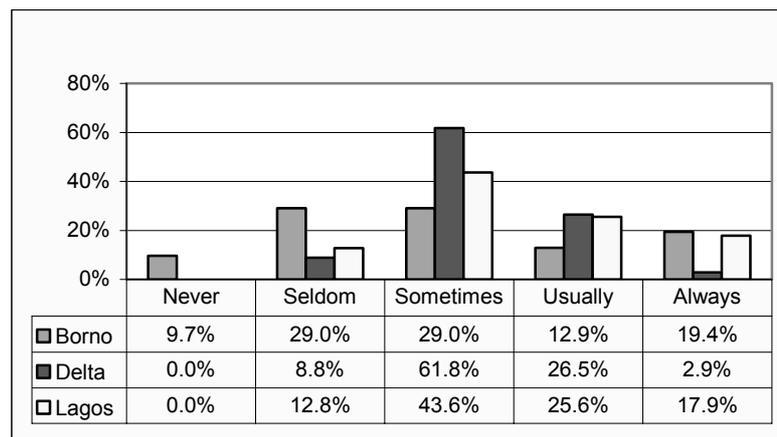
Judges, lawyers, court users and business people were asked various questions relating to their experience and perceptions of the independence, impartiality and fairness of the justice system.

1. Judges

Judges were consistent in their opinions concerning the fairness and impartiality of the system. Most of the judges rated the justice system either as sometimes or as usually fair and impartial. However, when comparing the three states, some differences in the perceptions emerged. For example, in Borno state, only 30 per cent perceived the justice system as usually or always fair, while about 40 per cent felt that the justice system was only seldom or never fair. Respondents in Delta and Lagos states were less critical (see figure 138).

Figure 138

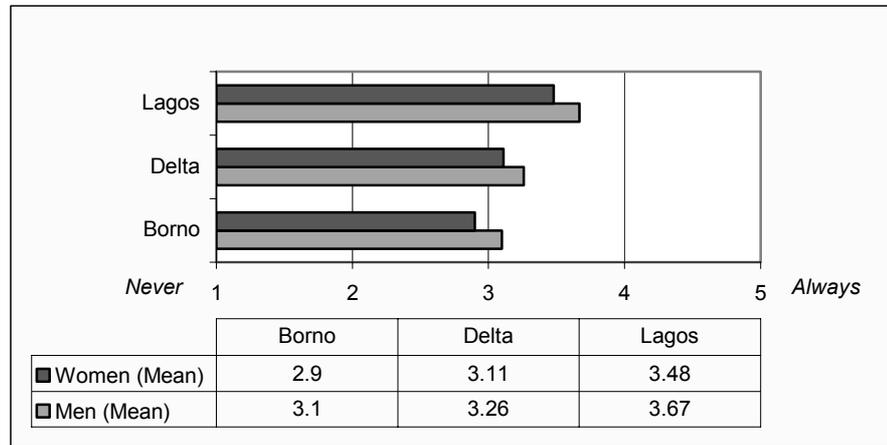
Perception of fairness and impartiality of the justice system (judges)



Significant differences could be observed according to gender, with female judges perceiving the justice system in general as less fair and impartial than their male colleagues (see figure 139).

Figure 139

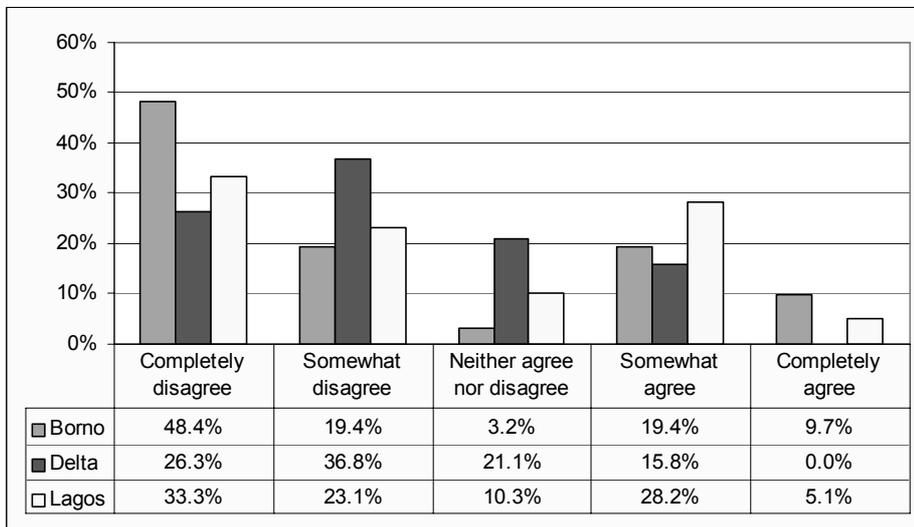
Perception of fairness and impartiality of the justice system, by gender (judges)



In order to explore further the judges’ perceptions of fairness and impartiality, respondents were asked the extent to which they agreed with the statement that “the justice system works only for the rich and the powerful”. In all three states, the majority of respondents either completely or somewhat disagreed (see figure 140).

Figure 140

Perception that the justice system works only for the rich and the powerful (judges)

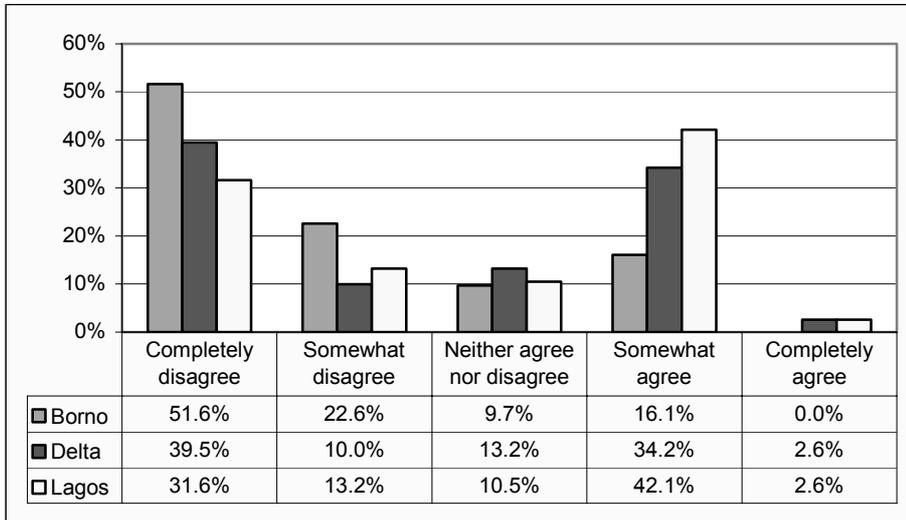


Moreover, judges were asked to consider the statement that “political pressure dominates the justice system”. Respondents largely disagreed with that statement. In

Borno state, more than 70 per cent completely or somewhat disagreed, followed by around 50 per cent in Delta state and 45 per cent in Lagos state (see figure 141).

Figure 141

Perception that political pressure dominates the justice system (judges)



However, when asked whether they believed that the Government controlled the justice system, 63 per cent in Delta state, 47 per cent in Borno state, and 43 per cent in Lagos state somewhat or completely agreed (see figures 142 and 143).

Figure 142

Perception that the Government controls the justice system (judges)

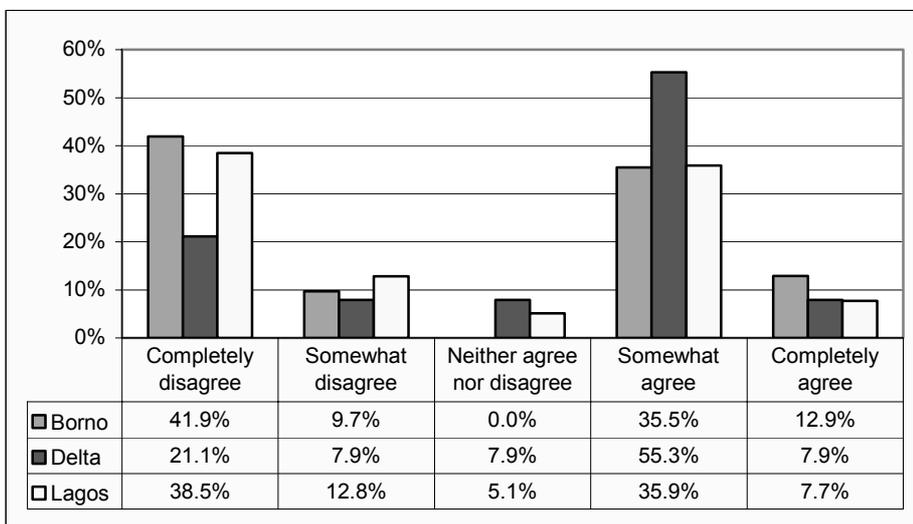
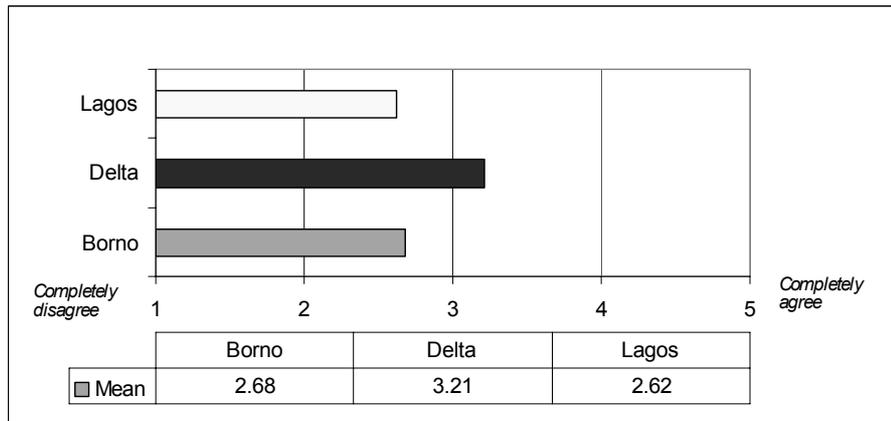
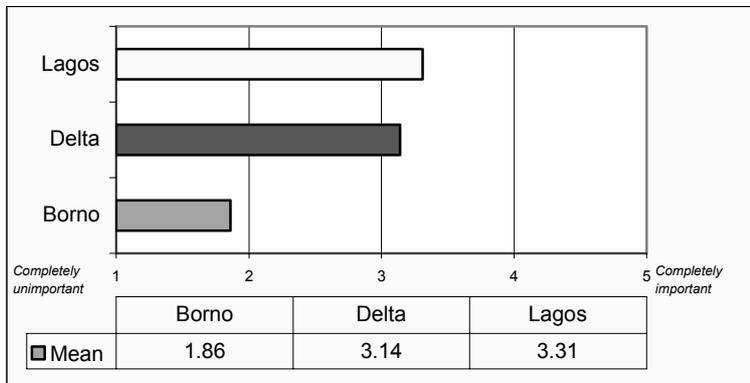


Figure 143
Perception that the Government controls the justice system, average by state (judges)



Furthermore, the survey attempted to explore the perceptions of meritocracy in the appointments and careers of judicial officers. Respondents were therefore asked how important political connections were for the treatment of staff. In Lagos and Delta states, respondents felt that such connections were neither overly important nor unimportant, while in Borno state most respondents considered political connections in the appointment of judges as unimportant (see figure 144).

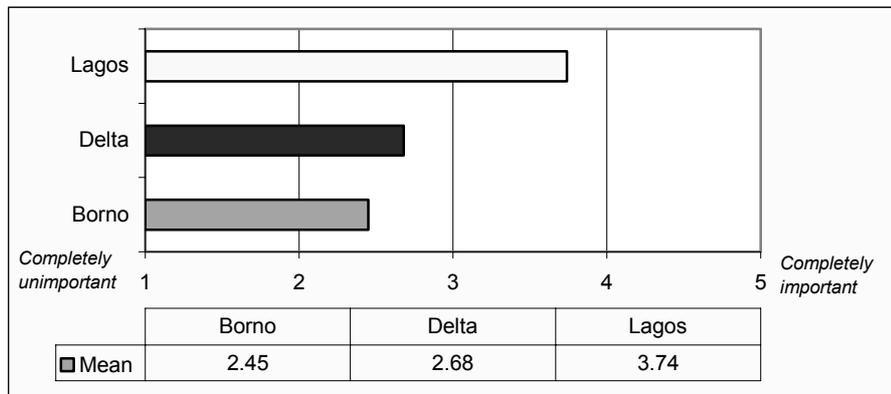
Figure 144
Perception of the importance of political connections in treatment of staff (judges)



A similar question was also asked with regard to other forms of connections, such as family, friendship or ethnicity. In Lagos state, the importance of such connections was rated relatively high, while in Delta and Borno states, the majority considered them as somewhat unimportant⁷ (see figure 145).

Figure 145

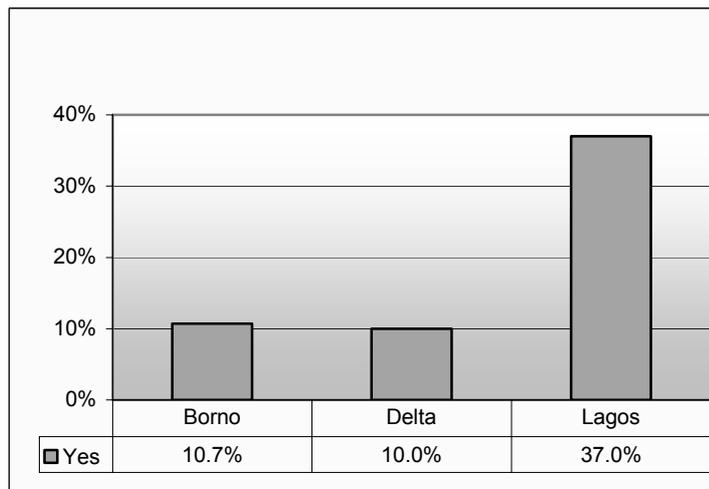
Perception of the importance of other types of connection in treatment of staff (judges)



Judges were further asked about their specific experience concerning political pressures influencing the appointment or promotion of any of their colleagues. While in Lagos state 37 per cent of the respondents reported such an incident, in Delta and Borno states only 10 per cent could recall a similar case (see figure 146).

Figure 146

Perception of influence of elected officials/political parties over hiring decisions/promotions (judges)



In general, party politics did not seem to have any bearing on the appointment or career of judges.

2. Lawyers

When lawyers were asked whether they believed that judicial appointments or judicial decisions were influenced by political pressure, Delta state emerged as the state where, according to respondents, such influences were most prevalent. About 62 per cent of the respondents in Delta state perceived judicial appointments to be

influenced by politics, while about 70 per cent felt that judicial decisions were influenced by political considerations. In Lagos and Borno states, this problem seemed to be less evident (see figures 147 and 148).

Figure 147

Perception of politically influenced judicial appointment in the previous five years (lawyers)

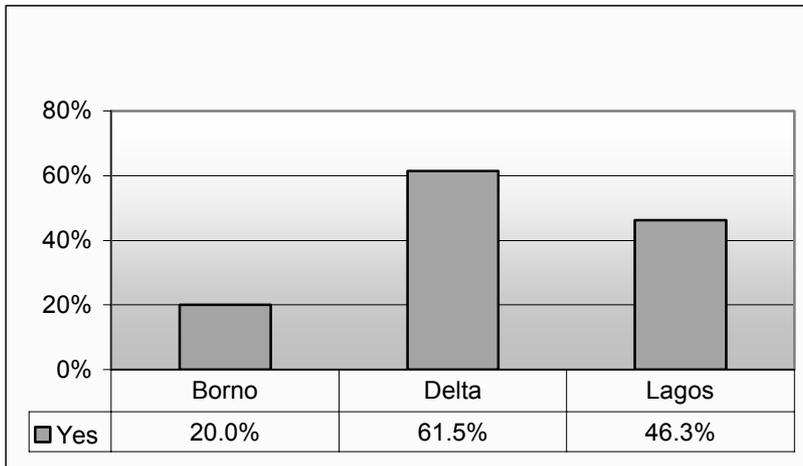
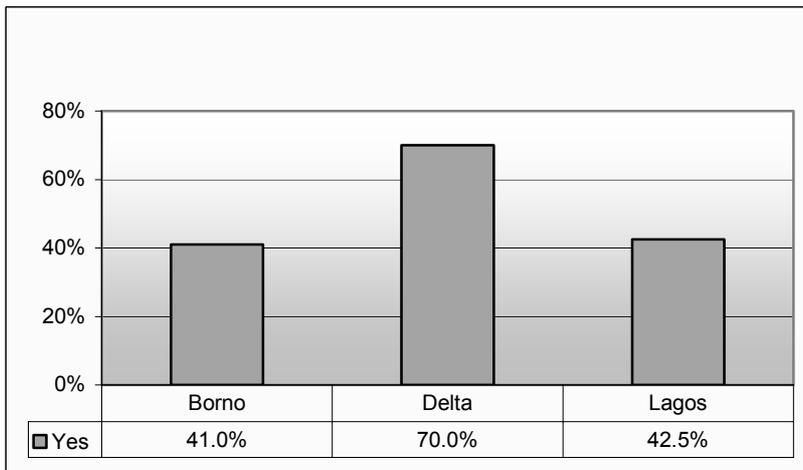


Figure 148

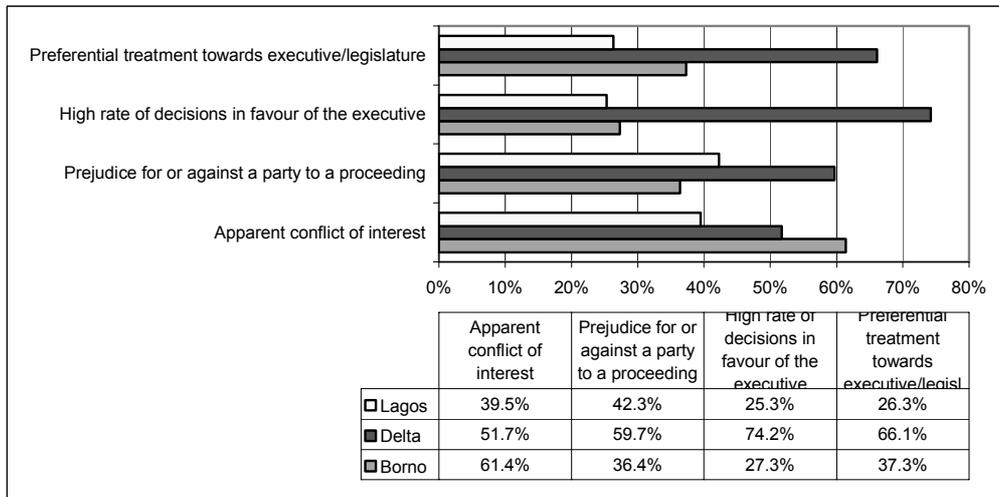
Perception of politically influenced judicial decisions (lawyers)



The scepticism of lawyers in Delta state concerning the independence and impartiality of the judiciary was confirmed when comparing problems such as preferential attitudes towards the executive/legislature, a high rate of decisions in favour of the executive and prejudice for or against a party in a proceeding with a wide range of other weaknesses of the justice system (see figure 149).

Figure 149

Perception of lawyers concerning the four most serious problems in the justice system (multiple choice)

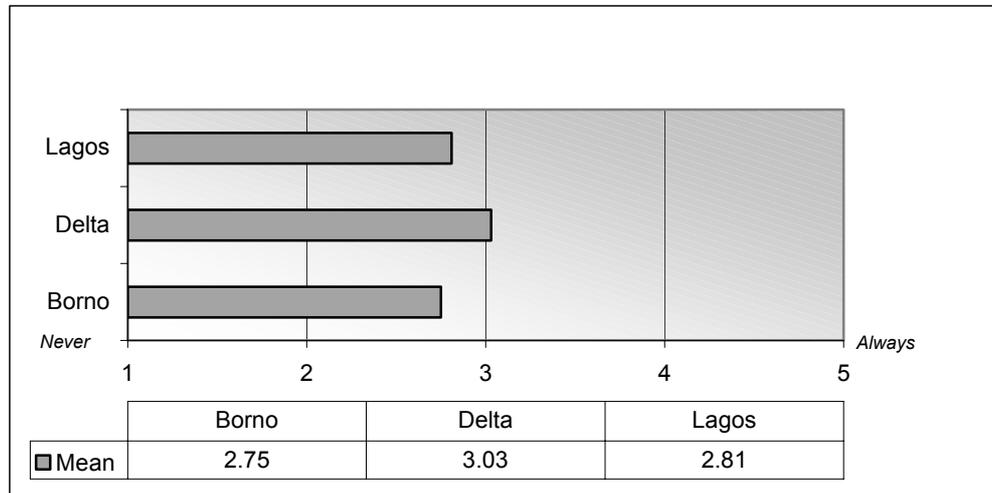


3. Court users

On a scale of 1 (never fair and impartial) to 5 (always fair and impartial), court users rated the courts on average as neither fair nor unfair. This perception was not particularly connected with the outcome of the last court case they experienced (see figure 150).

Figure 150

Perception of fairness and impartiality of the justice system (court users)

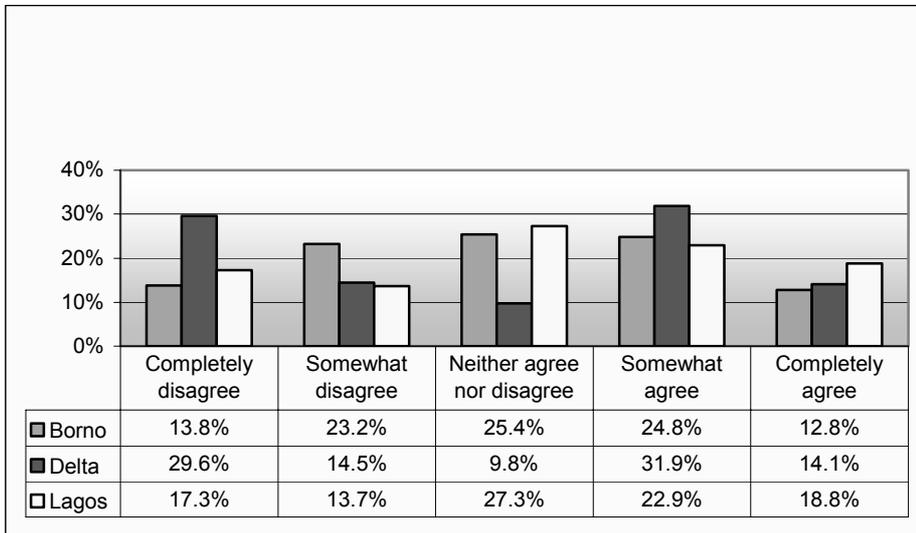


Court users were also asked about their opinions concerning the impact and influence of political pressures on the justice system. While in all three states opinions seemed divided among those agreeing and those disagreeing with this

statement, perceptions did not appear to be strongly dependent on whether the individual respondent had won or lost his or her last court case (see figure 151).

Figure 151

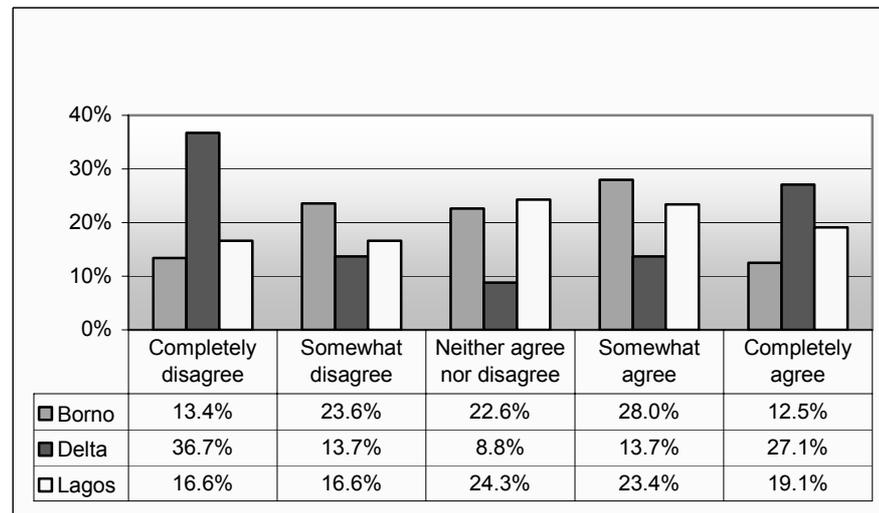
Perception that political pressure completely dominates the justice system (court users)



Similar results were obtained when court users were asked to assess the level of control exerted over the justice system by the executive branch. Again, differences in the perception of respondents were marginal (see figure 152).

Figure 152

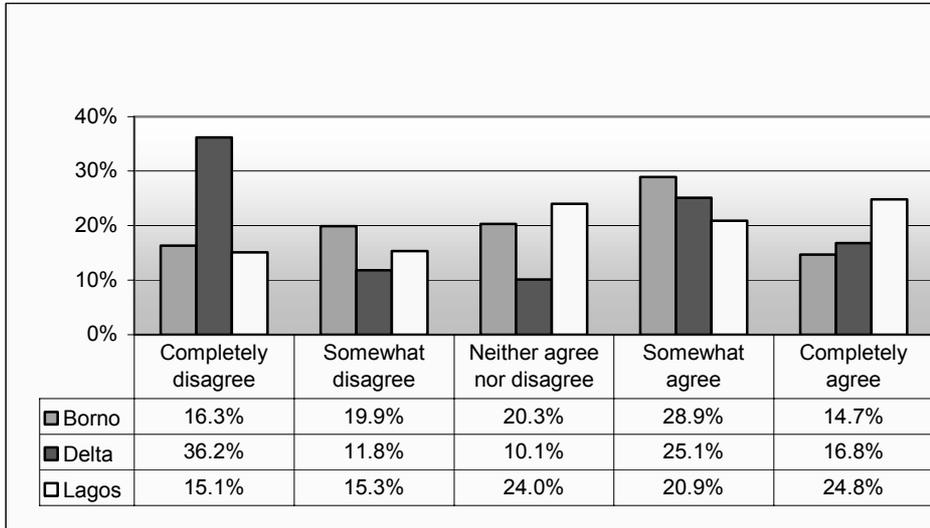
Perception that the executive branch completely controls the justice system (court users)



Court users were further asked whether they would agree with the statement that the judiciary was being controlled by the rich and the powerful. While about 40 per cent in Borno, Delta and Lagos states agreed, a similar percentage of respondents either somewhat or completely disagreed (see figure 153).

Figure 153

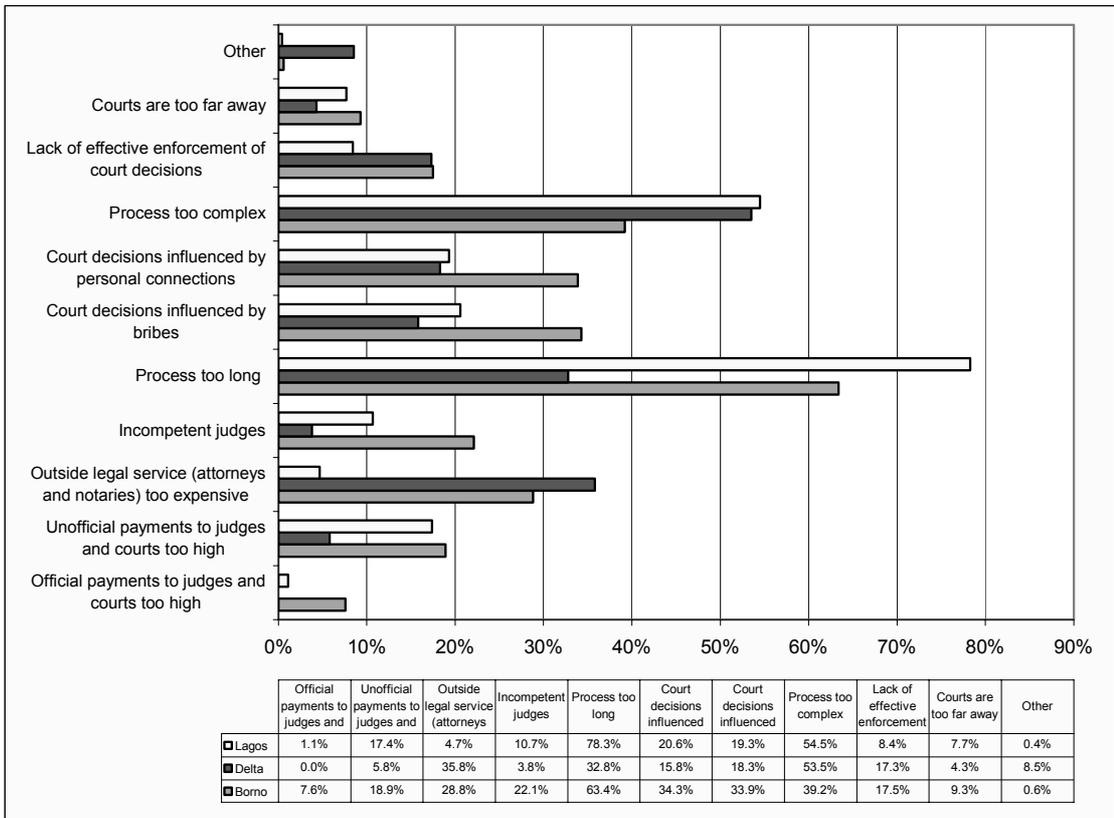
Perception that the justice system works only for the rich and the powerful (court users)



In a comparative analysis of the relative weight of factors hampering the proper administration of justice, lack of impartiality and independence was rated second only to the complexity and delays in justice delivery (see figure 154).

Figure 154

Perception of court users concerning the three most important obstacles to using the court (multiple choice)



4. Business people

The results of the survey among business people corresponded largely with that of court users. When asked to rate the justice system’s independence, impartiality and fairness on a scale of 1 (never fair and impartial) to 5 (always fair and impartial), respondents in all three states, on average, rated the justice system as being neither fair nor unfair (see figures 155 and 156).

Figure 155

Perception of fairness and impartiality of the justice system, average by state (business people)

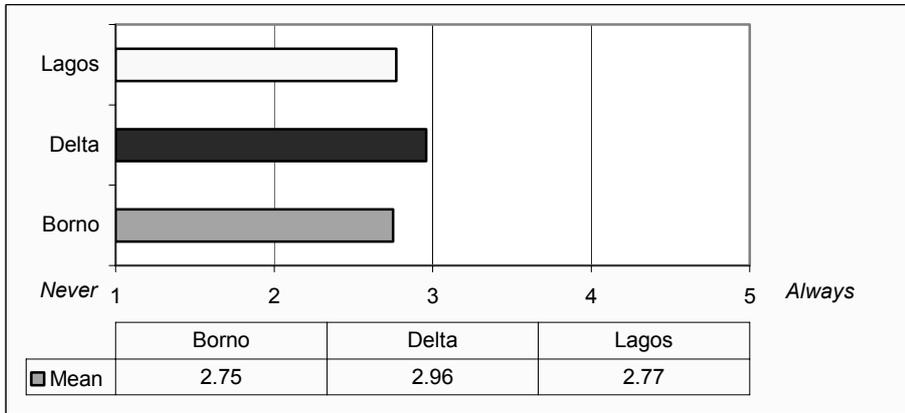
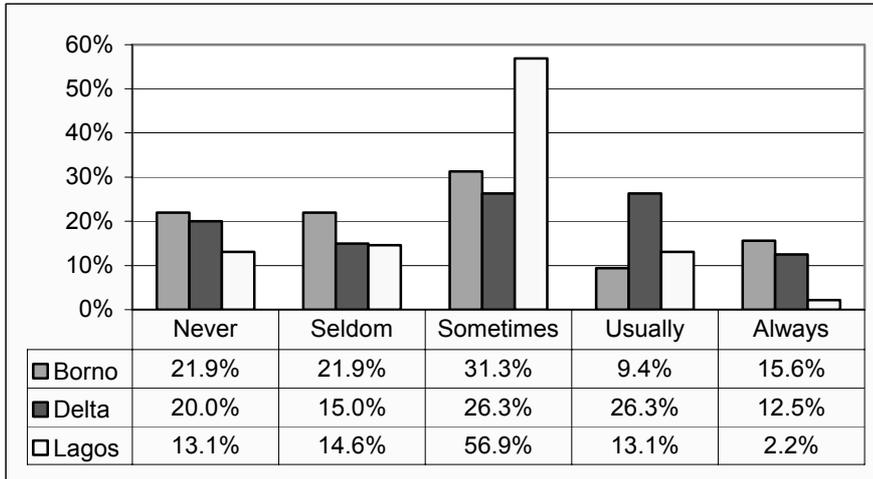


Figure 156

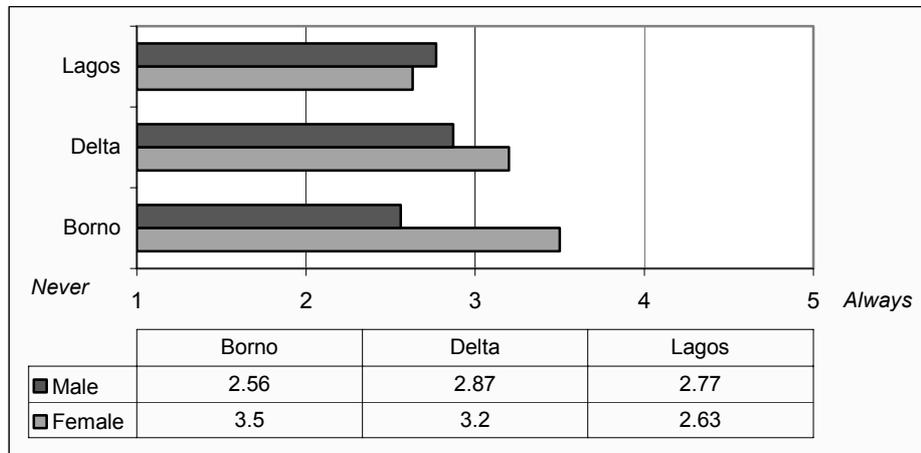
Perception of fairness and impartiality of the justice system (business people)



Female respondents perceived the justice system, on average, as more fair and impartial than their male colleagues. This was particularly true for Borno and Delta states (see figure 157).

Figure 157

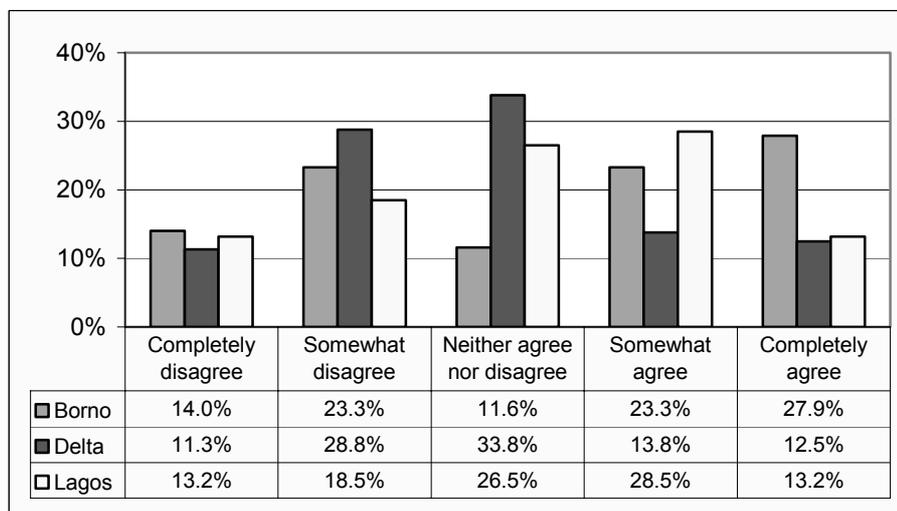
Perception of fairness and impartiality of the justice system, by gender (business people)



When asked about the degree to which they believed that the justice system was controlled by the Government (executive arm), about 25 per cent of the respondents in Delta state, 41 per cent in Lagos state and 52 per cent in Borno state either somewhat or completely agreed with this assumption (see figure 158). However, at the same time, 30-40 per cent disagreed with the statement.

Figure 158

Perception that the Government controls the justice system (business people)

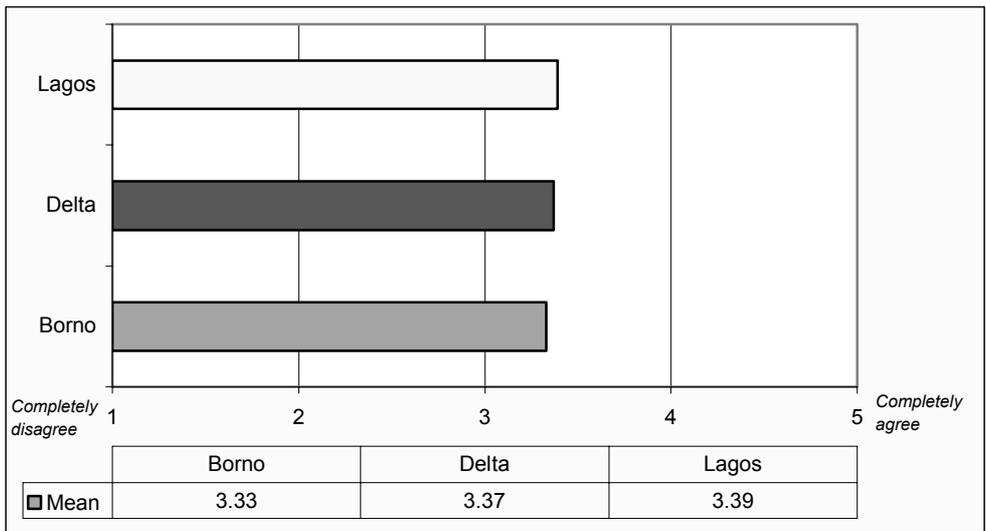


Business people were also asked whether they disagreed with the statement that the justice system was dominated by political pressures. It emerged that in Borno state the majority of respondents (53 per cent) either completely or somewhat agreed with

this statement, followed by Lagos state with 44 per cent and Borno state with 35 per cent of the respondents sharing this view.

The survey attempted also to determine whether other factors had a bearing on the perceived independence, impartiality and fairness of the justice system. Business people were therefore asked whether they agreed with the statement that “the justice system only works for the rich and the powerful”. It emerged that, in all three states, respondents consistently neither agreed nor disagreed with that statement (see figure 159).

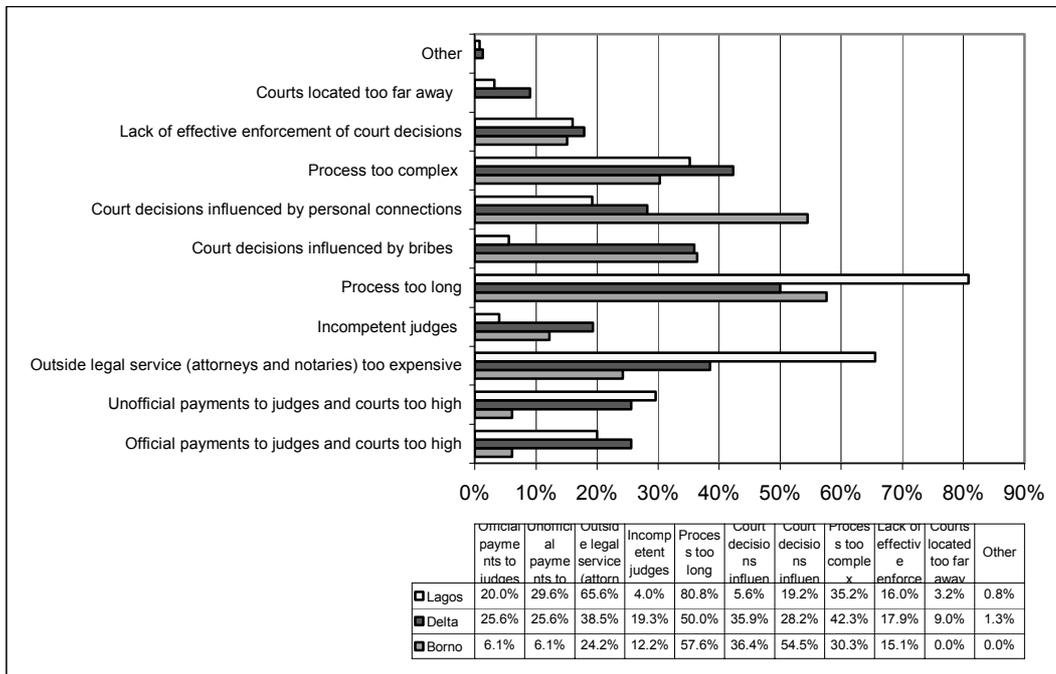
Figure 159
Perception that the justice system works only for the rich and the powerful (business people)



Out of 11 factors hampering justice delivery, respondents in Borno state ranked “the influence of personal connections in court decisions” as the second most important obstacle to using the courts, while in Lagos and Delta states this was much less perceived to be a problem (see figure 160).

Figure 160

Perception of business people concerning the most important obstacles to using the courts (multiple choice)



F. Corruption

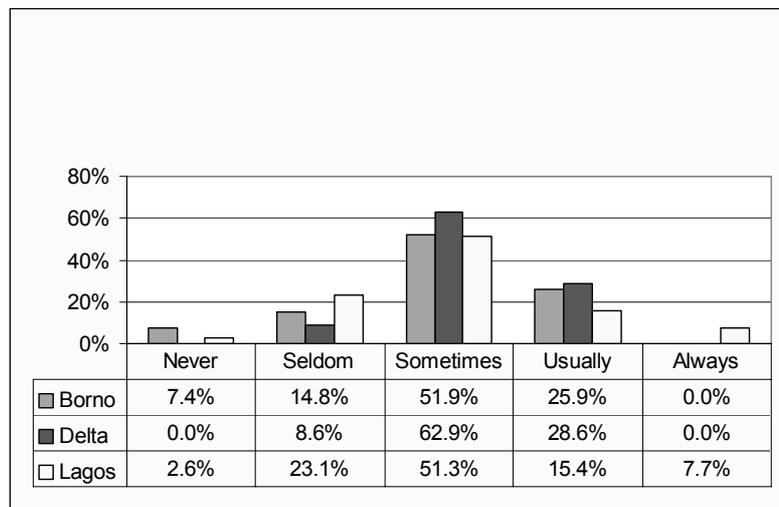
All categories of respondents were asked a comprehensive set of questions exploring both their perceptions and experience of corruption within the justice system.

1. Judges

Judges were very critical in their assessment of the levels of corruption within the courts, with the majority in all three states agreeing that the country's justice system was only sometimes transparent and uncorrupted (see figure 161).

Figure 161

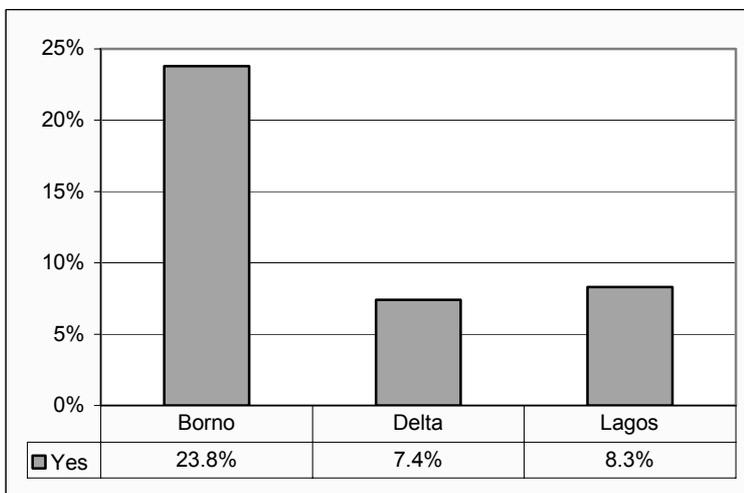
Question to judges: Do you believe your country's justice system to be uncorrupt and transparent?



When asked whether they were aware of anyone being asked to pay a bribe in order to expedite any step of the proceeding, in Borno state more than 20 per cent answered affirmatively, while in Lagos and Delta states, only about 8 per cent admitted to having such knowledge (see figure 162).

Figure 162

Question to judges: Are you aware of anybody being asked to pay any money to expedite any step of the proceeding?

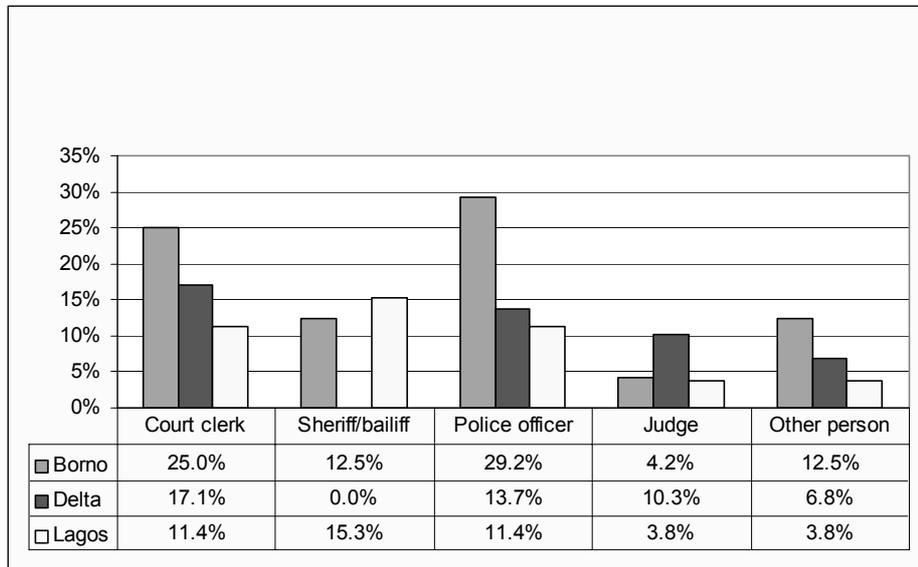


Judges were also asked to specify in which professional categories they were aware of concrete cases of bribery. According to the judges in Borno state, corruption involved mostly police officers, followed by court clerks and enforcement officers. A similar situation could be observed in Lagos state, with enforcement officers, police officers and court clerks being perceived as most likely to extort bribes. In

Delta state, a slightly different picture emerged, with the court clerks being perceived as the most likely to receive bribes, followed by police officers and then by the judges (see figure 163).

Figure 163

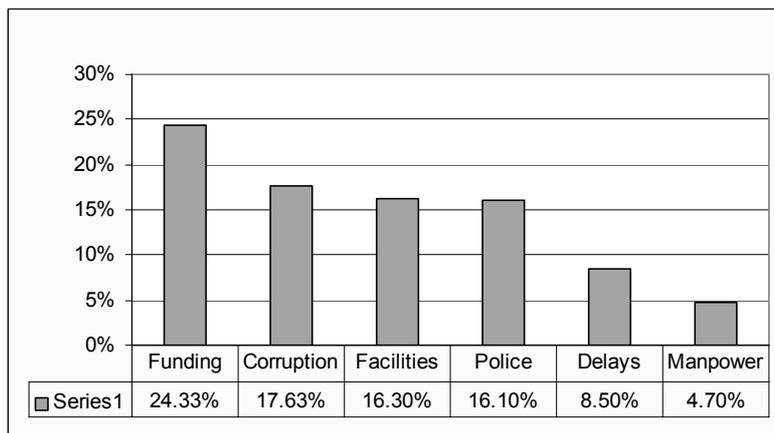
Question to judges: Are you aware of anybody being asked to pay money to any of the following?



The real magnitude of the problem of corruption within the overall context of the administration of justice emerged when comparing it with other obstacles hampering the delivery of justice. Overall, corruption was perceived as an extremely serious problem for the country's justice system, second only to the lack of sufficient funding (see figure 164).

Figure 164

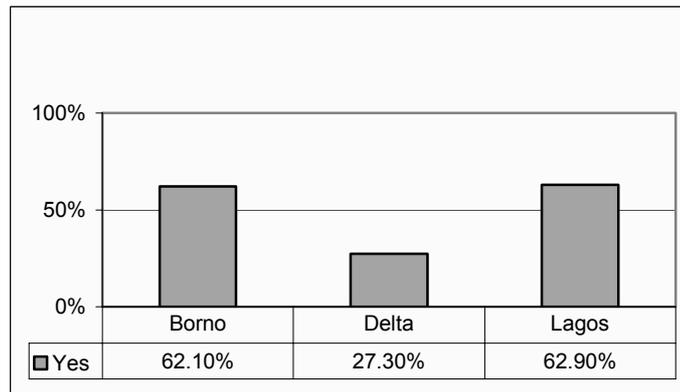
Question to judges: What is the most serious problem in the justice system?



The survey explored the efficiency and effectiveness of integrity safeguards, in particular the nature, scope and frequency of disciplinary control. When asked whether they were aware of any case of a member of the court staff or a judge having been subject to sanctions for poor performance or unprofessional conduct, while in Lagos and Borno states more than 60 per cent of the respondents replied affirmatively, in Delta state less than 30 per cent had knowledge of any case of disciplinary action (see figure 165).

Figure 165

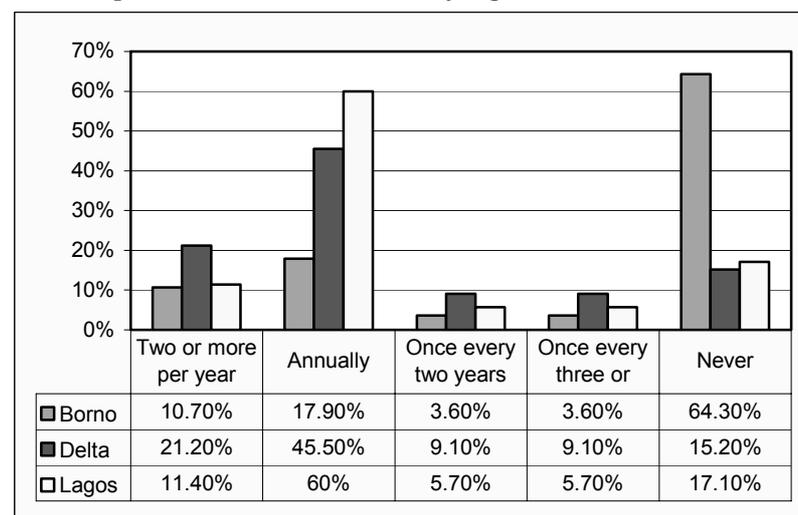
Question to judges: Has someone in your organization been sanctioned for poor performance?



The survey explored the frequency with which the performance of judges was formally evaluated. It appeared that, while in Lagos and Delta states roughly 70 per cent of the respondents claimed to be evaluated annually, at the time of the survey in Borno state more than 60 per cent of the judges had never been evaluated in writing (see figure 166).

Figure 166

Written performance evaluation of judges

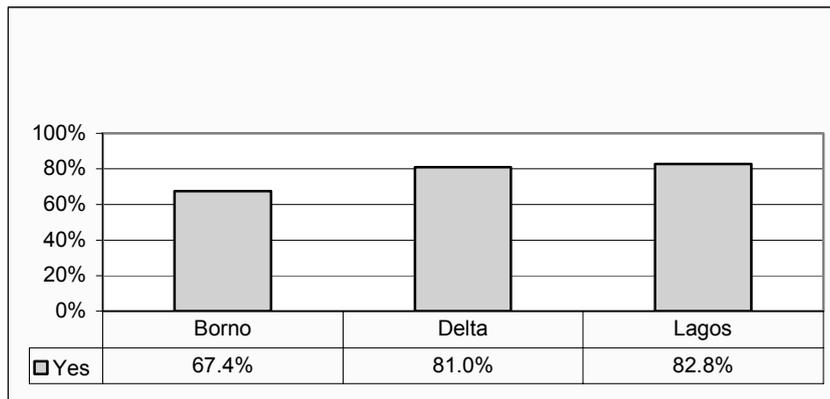


2. Lawyers

When lawyers' perceptions and experiences concerning corruption were explored, it emerged that the absolute majority of the respondents had found it necessary in the past to pay a bribe in order to expedite the handling of a procedural step. Both in Lagos and Delta states, more than 80 per cent of the lawyers claimed to have had to pay a bribe for expediting court procedures, while in Borno state 67 per cent had such an experience (see figure 167).

Figure 167

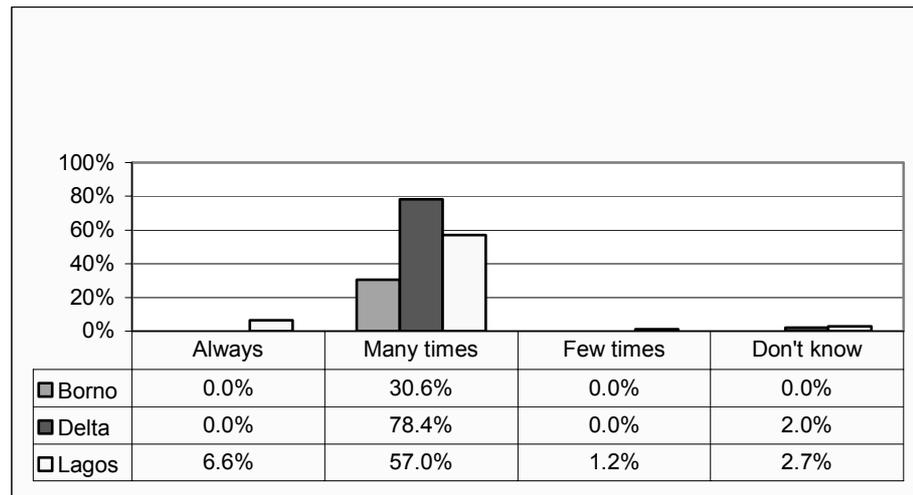
Question to lawyers: Did you ever find it necessary to pay money to expedite any step of the proceeding?



Out of the 65 per cent of the respondents who had claimed to have paid a bribe during the previous two years, Delta state emerged as the state where lawyers were by far the most likely to have used bribery in order to speed up the court process, with 78 per cent indicating that they had done so many times.

Figure 168

Question to lawyers: How many instances of bribery have occurred in the past year?



The survey tried to assess the nature and scope of bribery in the courts by asking lawyers specifically which procedural steps they typically felt inclined to expedite by means of bribery. It appeared that the steps most likely to be accelerated by payment of a bribe were the servicing of a summons on a defendant, the institution of proceedings, the trial proceedings and the delivery of a judgement (see table 4).

Table 4
Payments by lawyers to expedite a procedural step in a court case

	<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>
	<i>(Percentage)</i>		
Institution of proceedings	10.0	20.6	24.2
Issue of summons on defendant	6.7	19.1	16.3
Service of summons on defendant	13.3	33.8	28.8
Discovery of documents	6.7	20.6	12.6
Interrogatories	6.7	16.2	8.4
Implementation of bail order	13.3	27.9	20.0
Issue of summons on witness	10.0	20.6	10.7
Service of summons on witness	6.7	27.9	11.6
Commencement of trial	10.0	23.5	11.2
Trial proceedings	6.7	22.1	19.5
Delivery of judgement	6.7	17.6	11.2
Obtaining copy of judgement	20.0	32.4	18.1
Obtaining certified copy of proceedings	10.0	33.8	14.9
Transmission of court record to appeal court	10.0	36.8	12.6
Execution of judgement	13.3	26.5	15.8

Lawyers were also asked to specify to whom they would usually pay bribes. In Lagos and Delta states, most of the lawyers claimed to have bribed court clerks, while in Borno state the main recipients were those who enforced the judgements of the court. Of the respondents in all three states 30-45 per cent had also paid money to the police. A significant number of the respondents also claimed to have paid bribes to a judge. In Borno state, more than 30 per cent made this claim, followed by Lagos state with 23 per cent and Delta state with 17 per cent.

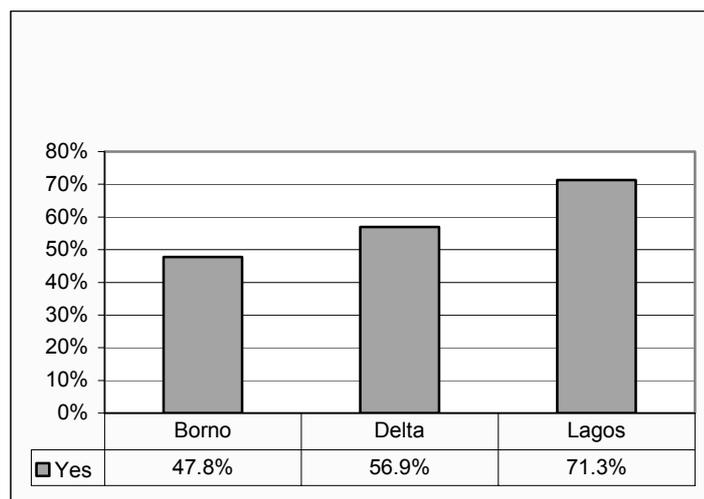
Table 5
Payments by lawyers to professional categories in the justice sector

	<i>Borno</i>	<i>Delta</i>	<i>Lagos</i>	<i>Total</i>
	<i>Percentage</i>			
Court clerk	48.7	72.7	67.1	70.6
Enforcement officer	27.2	56.5	40.3	46.3
Police officer	32.6	44.0	44.2	43.1
Judge	31.5	16.7	22.9	20.0
Another lawyer	4.6	12.7	4.8	5.9
Other person	6.9	20.4	9.0	10.2
Total negative responses	32.6	19.0	17.2	19.0
Total affirmative responses	67.4	81.0	82.8	81.0

Nevertheless lawyers were mostly satisfied with the service they had received in return for the unofficial payment (see figure 169).

Figure 169

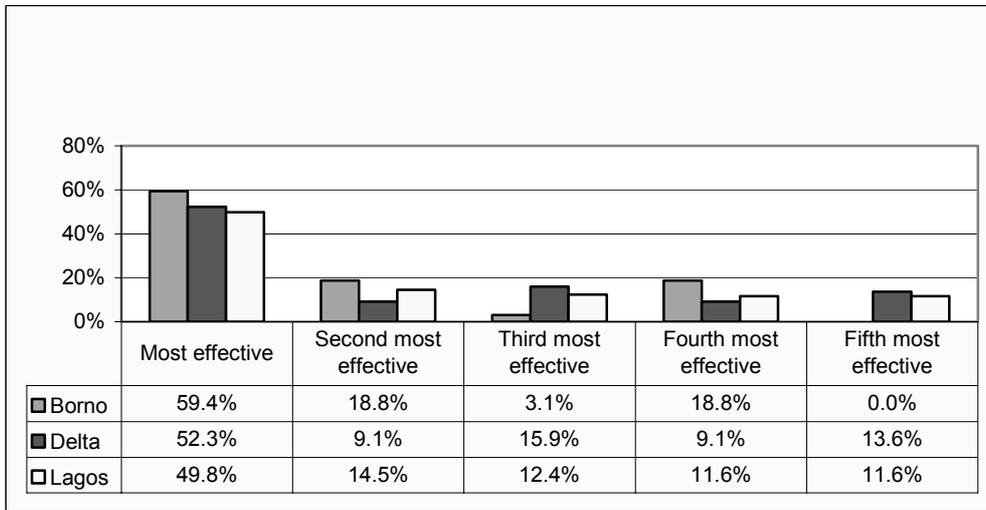
Question to lawyers: Were you satisfied with the service you received for the payment?



In conclusion, lawyers were asked to rate the effectiveness of enhancing the court's capacity to detect and punish corruption among a number of measures to improve the justice system. More than 50 per cent in each of the three states ranked combating corruption as the most important effective measure to improve the courts' performance (see figure 170).

Figure 170

Question to lawyers: How effective would a better capacity to detect and punish corruption be for improving court performance?

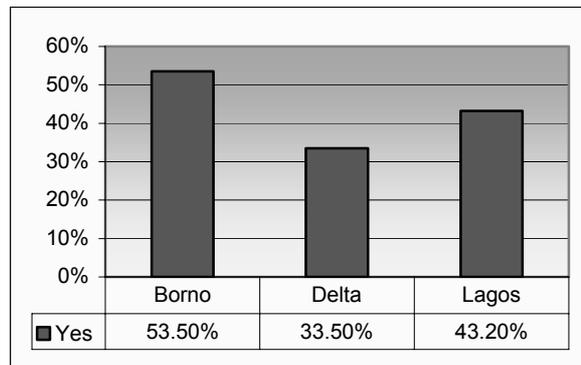


3. Court users

The experience of corruption among court users differed significantly across the three states. When asked whether they had made unofficial payments in relation to the case they were currently attending, the responses differed significantly from state to state. In Borno state, more than 53 per cent indicated that they had made such payments, followed by Lagos state with 43 per cent and Delta state with 33 per cent (see figure 171).

Figure 171

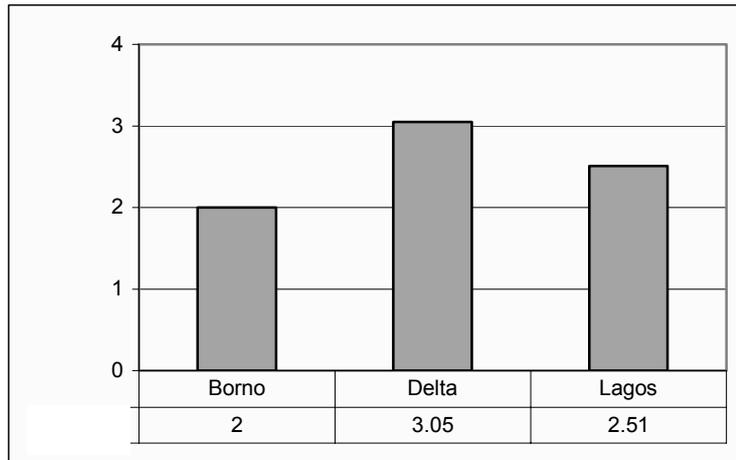
Question to court users: Apart from a lawyer's fee, have you made any other payment?



However, when asked about the frequency of such payments, those who had actually experienced corruption in Delta state had done so more often than their peers in the other two states (see figure 172).

Figure 172

Question to court users: On how many occasions did you make this payment?



Court users were also asked to whom they had made such unofficial payments. They largely confirmed the experience of lawyers, who had claimed to have made payments mostly to court clerks. However, there were variations in the responses regarding corruption among other professionals. In Lagos and Borno states, 10-15 per cent of the respondents had made payments to prosecutors,⁸ while in Delta State, 12 per cent indicated having paid the lawyers' clerks. Very seldom, according to court users, had they paid bribes to a judge (see figures 173-175).

Figure 173

Recipients of unofficial payments by court users (Borno state)

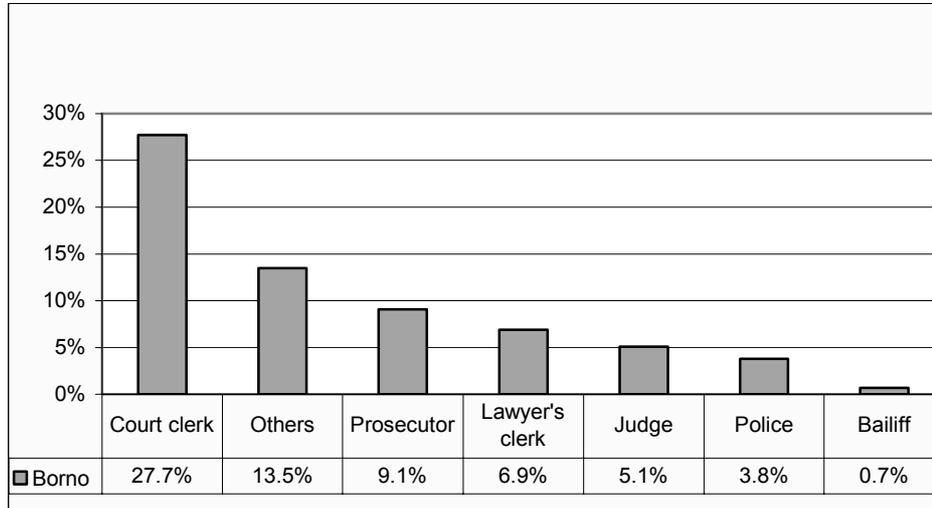


Figure 174

Recipients of unofficial payments by court users (Delta state)

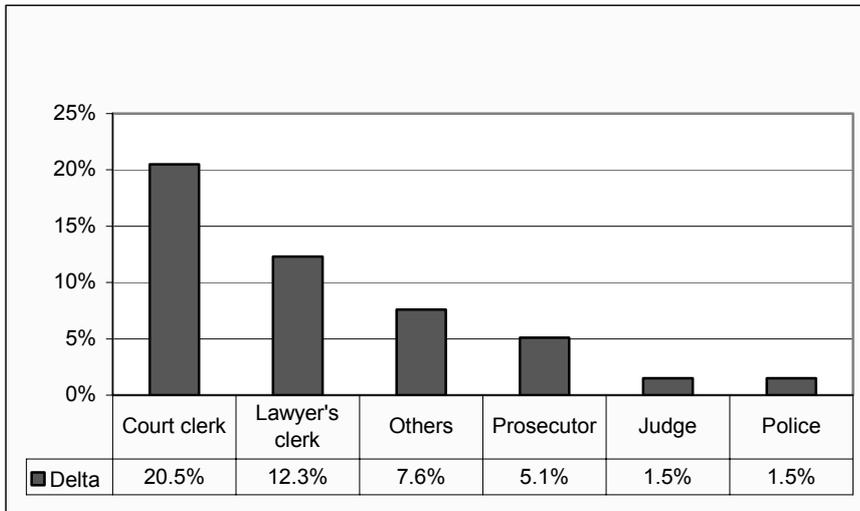
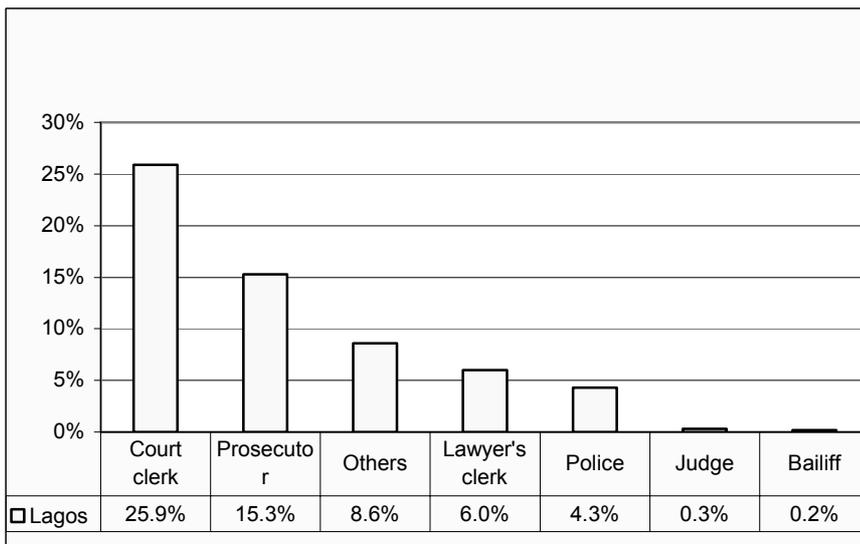


Figure 175

Recipients of unofficial payments by court users (Lagos state)



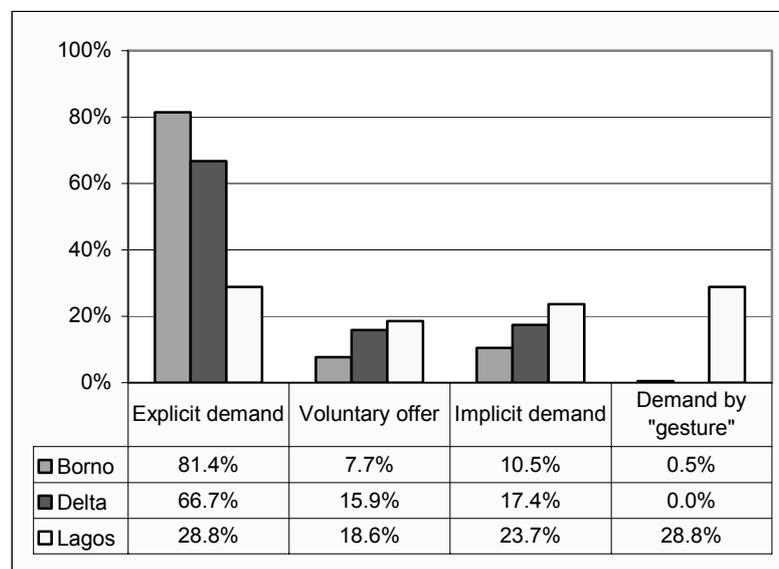
The reasons for making unofficial payments differed among the three states. Respondents had mostly paid for the servicing of the court process and bail. In Delta state, 51 per cent of the respondents had paid a bribe in order to speed up the servicing of the court process, followed by 45 per cent in Lagos and 12 per cent in Borno states. In both Borno and Lagos states, many respondents indicated that they had had to pay for bail, 21 per cent and 25 per cent respectively, while in Delta state, this seemed much less common. Speeding up the procedure was given as the major reason for unofficial payments by about 12 per cent of the respondents in Delta and Lagos states. In Lagos state, 17 per cent of the respondents admitted to

having paid for a favourable judgement, while in Delta state, only 8.4 per cent and in Borno state only 3.3 per cent had paid bribes for this purpose.

In order to explore further the extent and location of corruption in the courts, the survey attempted to establish who usually initiated the process of bribery and how it was done. In most cases, it was found that the request for an unofficial payment was explicit and was initiated by the public official. In Borno state, for instance, 81 per cent of the respondents were explicitly asked for a bribe, while in Delta and Lagos states the requests were more subtle, with 50 per cent of the respondents having been asked for a bribe either through gesture or an implicit demand by means of a delay, unjustified refusal of bail or a general reluctance to carry out a requested service (see figure 176).

Figure 176

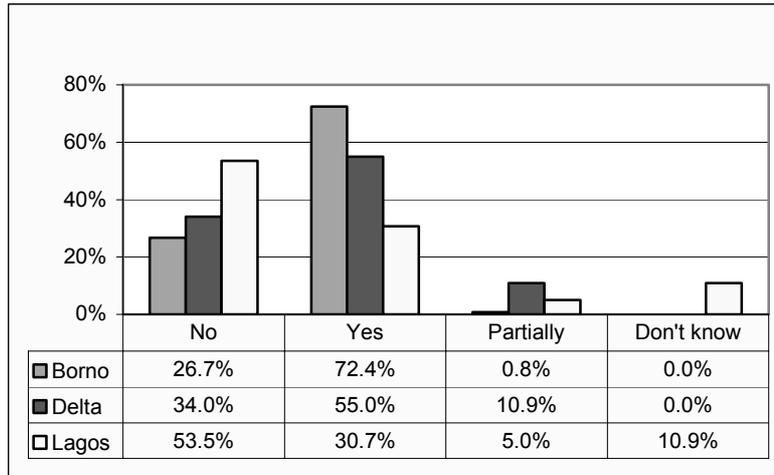
Question to court users: What indication did you receive that you were expected to make an unofficial payment?



The court users were also asked to what degree they had been satisfied with the services provided in return for the bribe. Court users in Borno state seemed to be more satisfied, followed by those in Delta state and, to a lesser extent, Lagos state (see figure 177).

Figure 177

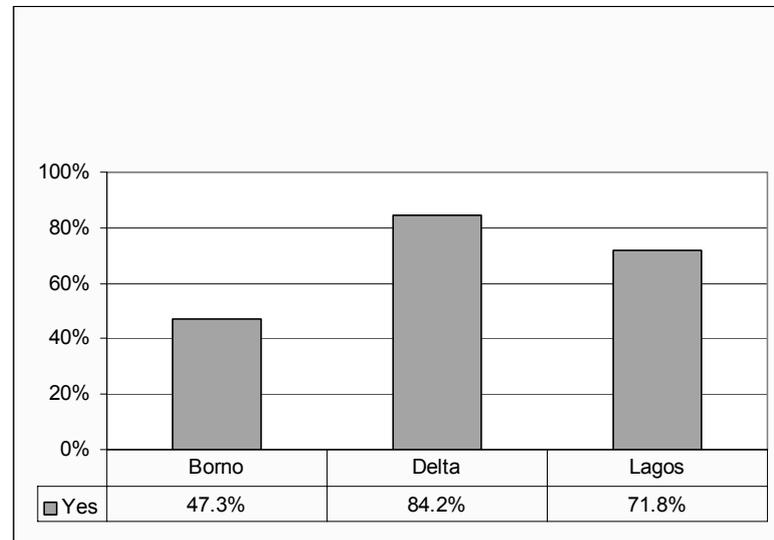
Question to court users: Were you satisfied with the service you received?



Court users were further asked whether they had received any indication that they were expected to pay a bribe in order for the police to initiate investigations. An average of 70 per cent of the respondents across the three states claimed to have received indications that they needed to bribe the police, with the police in Delta state being rated as the most corrupt, followed by the police in Lagos and then Borno states (see figure 178).

Figure 178

Question to court users: Did you receive any indication that your household was expected to make an unofficial payment to police for the investigation?

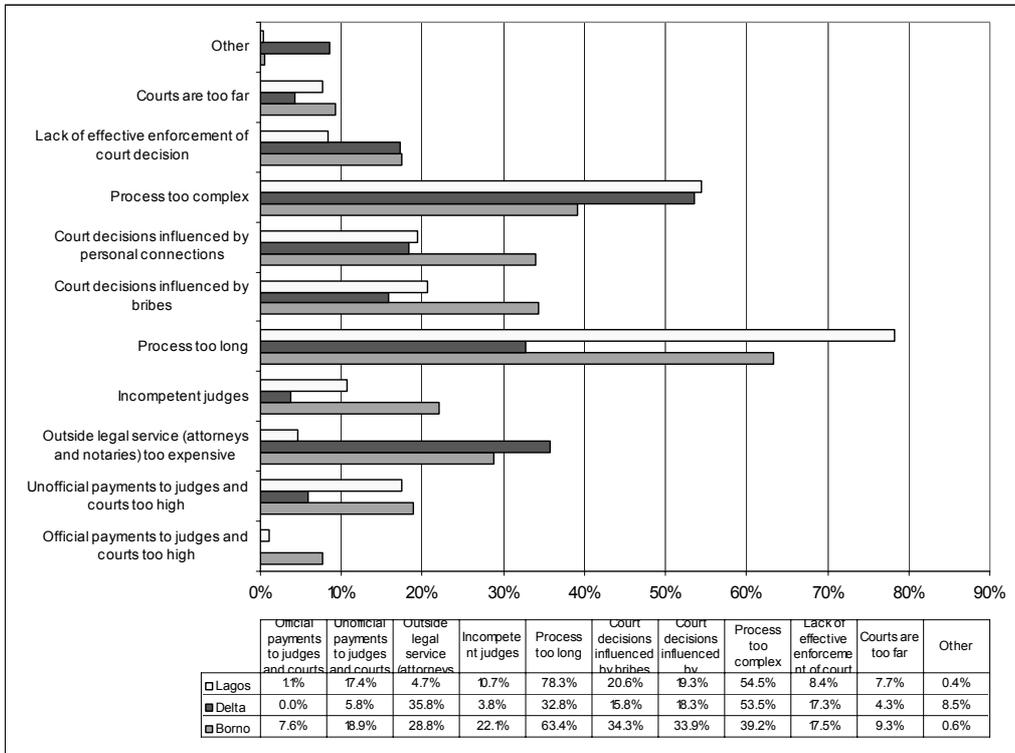


However, regardless of the high prevalence of corruption in the justice system, court users did not believe that corruption was the most dominant obstacle to justice

delivery. The complexity and the length of the justice delivery process were rated as even bigger problems (see figure 179).

Figure 179

Question to court users: What were the three most significant obstacles to using the courts (multiple choice)

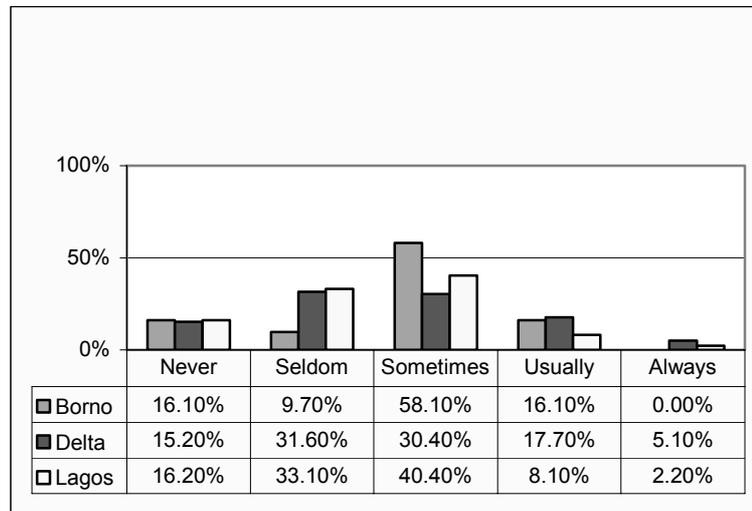


4. Business people

The perceptions of business people regarding the level of transparency and accountability of the courts were more pessimistic than those of court users. Only 10-20 per cent believed that the courts were always or usually transparent, while 50 per cent of respondents in Lagos state, 45 per cent in Delta state and 25 per cent in Borno state believed the justice system to be never or seldom transparent and incorruptible (see figure 180).

Figure 180

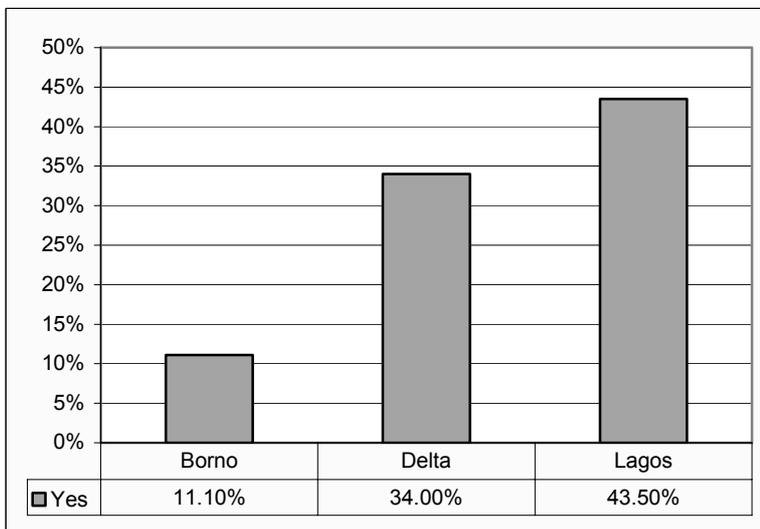
Question to business people: Do you believe your country's justice system to be uncorrupt and transparent?



When business people were asked about their concrete experience with corruption in the courts, it emerged that 43.5 per cent of respondents in Lagos state had received an indication to pay a bribe in order to get a favourable decision, followed by 34 per cent of those in Delta state and 11 per cent of those in Borno state (see figure 181).

Figure 181

Question to business people: In your most recent case, did you receive any indication that payment of a bribe would result in a favourable decision?

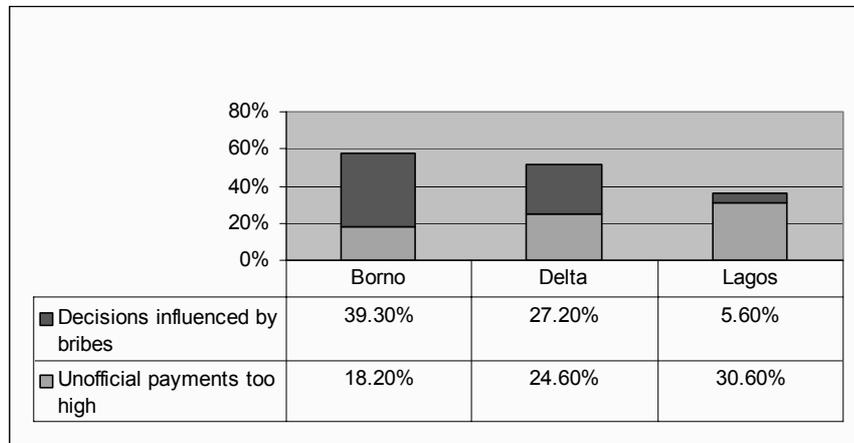


Regardless of the above, only 35 per cent of the respondents in Lagos state rated corruption in the courts as one of the most important obstacles to access to justice,

while in Borno and Delta states, the percentages were higher, at 58 per cent and 50 per cent, respectively (see figure 182).

Figure 182

Question to prisoners: Is corruption one of the most important problems of the justice system?

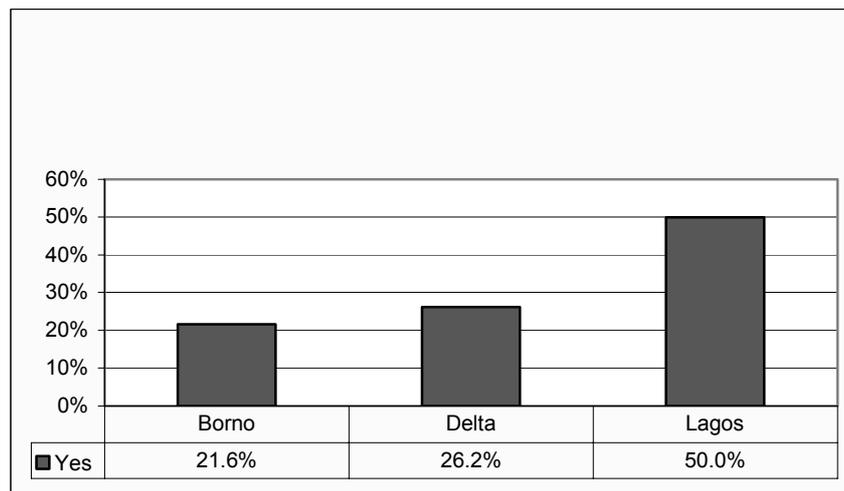


5. Prisoners awaiting trial

The survey explored the experience of prisoners awaiting trial with regard to corruption in the justice system. When asked whether they had made any unofficial payment in connection with their case, most of the prisoners denied that they had done so. In Borno state, 80 per cent had made no payments beside their lawyers' fees. In Delta state, 75 per cent had only made payments to their lawyers, while in Lagos state the percentage dropped to 50 per cent (see figure 183).

Figure 183

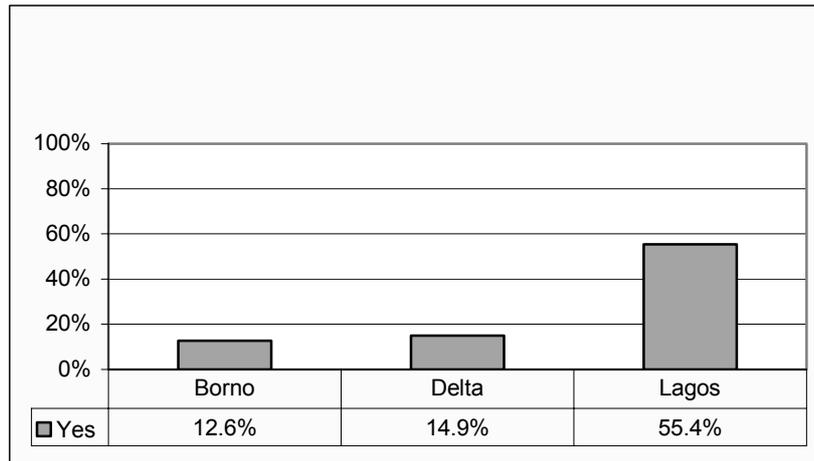
Question to prisoners: Have you or anyone else on your behalf made any payment to anyone other than your lawyer in connection with your case?



Since prisoners are in a particularly vulnerable position, which hinders them from talking openly about corruption in the justice system, they were also asked whether they had knowledge of any of their peers having been asked to pay a bribe (see figure 184). The results corresponded closely to those from the prior question, suggesting the reliability of their answers.

Figure 184

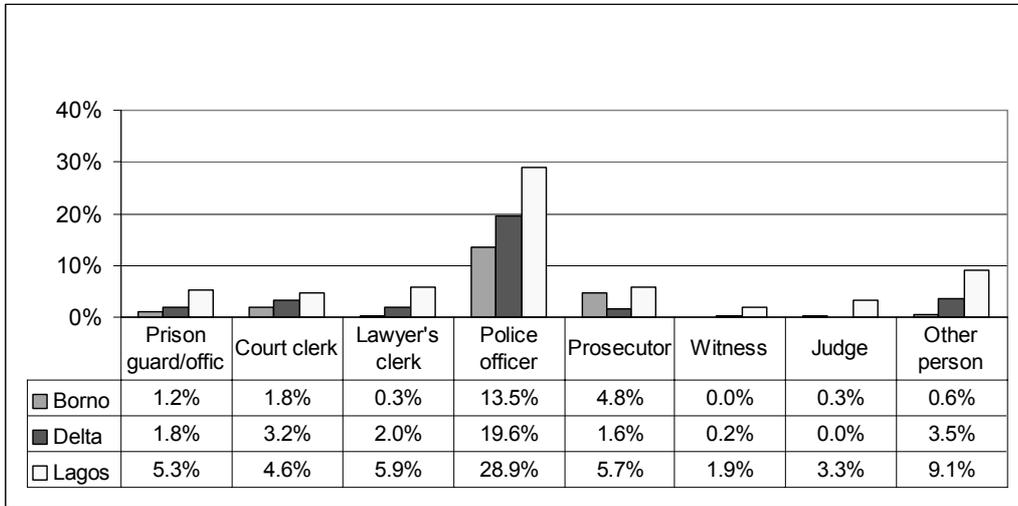
Question to prisoners: Do you know of any other person on remand who has made any payment in connection with their case to persons other than their lawyer?



Moreover, those prisoners who had admitted to having paid a bribe were asked to whom they had made such a payment. It emerged that, in the majority of cases, bribes were paid to the police. All other professional categories within the criminal justice system were far less likely to demand a bribe or extort money from prisoners (see figure 185).

Figure 185

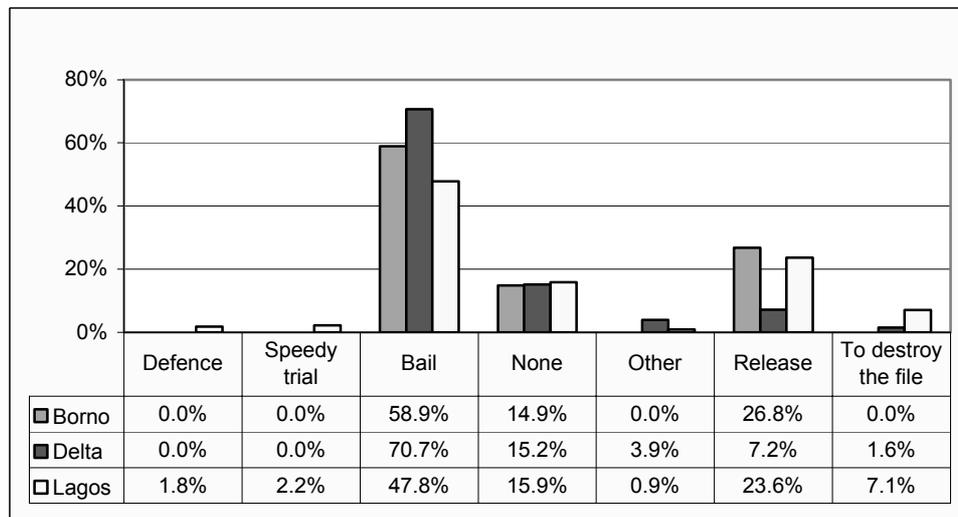
Question to prisoners: If you or anyone else on your behalf has made any payment to anyone in connection with your case other than your lawyer, to whom was the payment made?



In the majority of cases, bribes were paid in order to achieve, facilitate or speed up the granting of bail or to be released. However, about 15 per cent also claimed that they did not even know for what purpose they had paid the bribe (see figure 186).

Figure 186

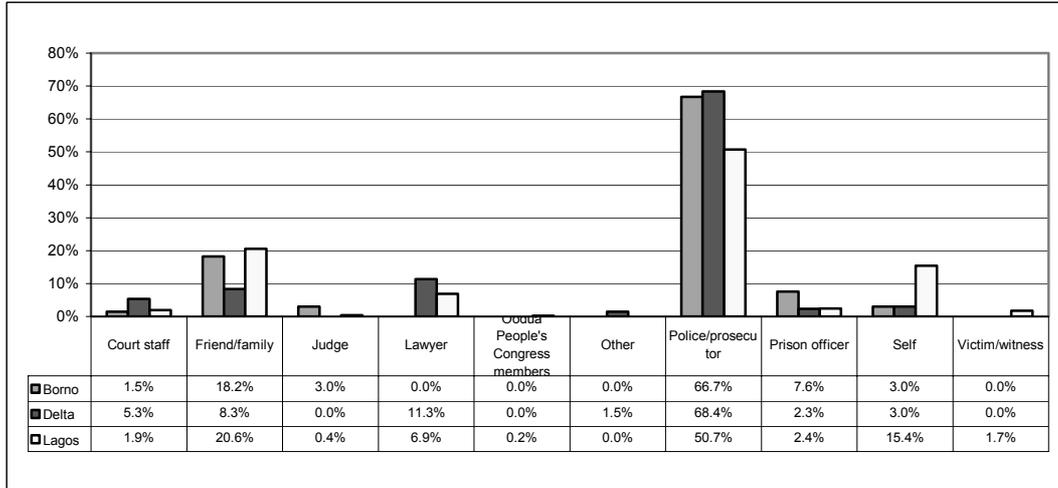
Question to prisoners: What service was the payment for?



Prisoners awaiting trial were also asked to indicate who had suggested making an unofficial payment. In the absolute majority of the cases, it had been a police prosecutor, but family members or friends had also suggested that it was necessary to make an unofficial payment (see figure 187).

Figure 187

Question to prisoners: Who suggested that a payment should be made?



However, in only very few cases did the recipient of the bribe actually deliver the promised service (see figures 188 and 189).⁹

Figure 188

Question to prisoners: Was what was promised done?

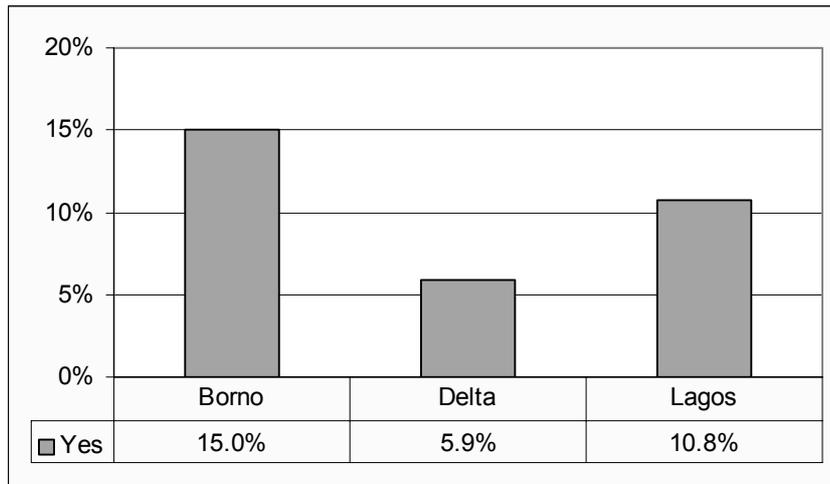
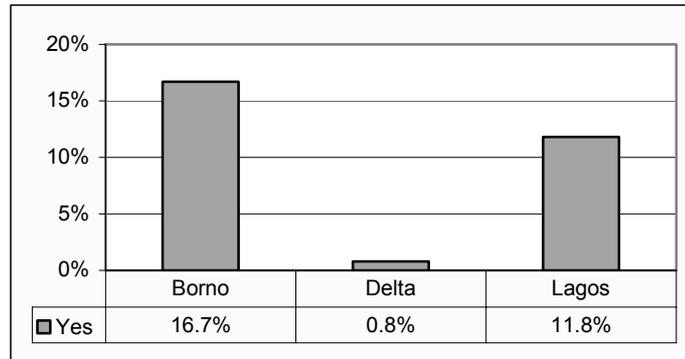


Figure 189

Question to prisoners: Are you satisfied with the service you received on payment of the money?



Notes

- ¹ All the figures indicated in the text refer to the number of respondents to a specific question unless otherwise indicated.
- ² As Lagos is a cosmopolitan city, informal avenues for resolving conflict with neighbours are rare, since they probably belong to different ethnic groups, religions or tribes.
- ³ The market exchange rate on 2 May 2002 was 1 US\$ to 129.752 naira.
- ⁴ The sample was divided into five classes according to the number of employees, with the classes defined to achieve a normal distribution within the sample. Very small companies are those with 4 or less employees; small companies have between 4 and 10 employees, medium companies have between 10 and 30, large companies have between 30 and 700, while very large companies have more than 700 employees.
- ⁵ The complexity of the reporting process involves, inter alia, the proximity to the police station or court and the preliminary interrogation that the complainant might be subjected to. Sometimes this could be a disincentive for reporting crime cases.
- ⁶ As pointed out earlier, official statistics suggest that there is more reported crime in Lagos than in other parts of Nigeria (see Nigeria police monthly and quarterly crime reports, published by the Federal Office of Statistics, Abuja, 2003).
- ⁷ In this context, the ethnic structure of the judges' sample was compared to the court users' sample and it was discovered that, while in Delta state they evidenced a similar ethnic composition, in Lagos state the percentage of judges belonging to the major ethnicity (around 90 per cent) was much higher than the actual part of this ethnicity in the overall population (46 per cent). The same unbalanced distribution was observed in Borno state.
- ⁸ As the absolute majority of criminal cases is handled by police prosecutors, it is safe to assume that respondents were mostly referring to police prosecutors, rather than prosecutors working in the office of the Attorney General.
- ⁹ The low rate of delivery of the promised service may be understandable when considering that the main reason for bribery among prisoners was to obtain bail. Being still in prison at the moment of the interview (presumably after paying the bribe) meant that the promised action had not yet been taken. One possible conclusion is that bribery in the prisons is much more widespread than the initial assessment of experience suggests, since those who responded to the request for a bribe were not likely to continue to be detained.

VI. Case audit

As part of the methodology to determine the integrity of the judicial process, it was considered necessary to examine a limited number of completed cases in the three pilot states. The aim was to distil from the cases an appreciation of the existence or otherwise of a coherent and consistent jurisprudential application or interpretation of the extant laws. Where it is found that there has been a mis-application of the law or rules of practice, then, subject to the discretionary powers of the judicial officers, a claim of abuse of judicial powers will become inevitable.

It was decided to review 20 cases from each of the three pilot states of Lagos, Delta and Borno. Land matters were considered crucial to the study and, to that extent, it was agreed that 10 land cases should be reviewed in the three states. As regards criminal cases, preference was given to criminal matters that were prevalent in each of the states. Against this background, it was agreed that emphasis should be on the exercise of judicial discretion in the granting or refusal of bail applications to drug trafficking suspects in Lagos state, armed robbery suspects in Delta state and persons accused of theft in Borno state.

Ideally, the cases examined would have been extracted from the law reports. Regrettably, only a few cases could be found for Lagos state and none was reported for Delta and Borno states, respectively. The research team was left with no option but to visit the various state judiciaries to obtain unreported judgements. In some instances, it was even difficult to obtain a sufficient number of cases to meet the set. This in effect made it difficult for the research to be selective in the choice of cases reviewed. However, this in no way suggests that the state judiciary carefully selected untainted cases for obvious reasons. The research team was careful enough to ensure that the integrity of the case review was not compromised by a selection process that foreclosed the essence of the review by presentation of judgements with favourable conclusions.

It must be highlighted that not all the cases reviewed were limited to the high courts. Theft cases in Borno state are by law handled by magistrate courts and courts of coordinate jurisdictions. Bail applications in such cases are not made to the high court. It is instructive to note that review of cases of courts lower than the high courts broadened the scope of the research and made it truly representative, as it afforded an opportunity to review the exercise of judicial discretion in the lower courts.

As far as land matters were concerned, all cases examined had, as their principal claim, the declaration of title over various pieces of land covered by either customary or statutory certificates of occupancy granted by either the local government or the state governor, injunctions against the defendants, their agents, servants or privies from interfering with the peaceful possession of the disputed pieces of land, compensation for alleged damages or payment of costs of the respective actions.

Reviewing the judgements from all three states, there was no evidence of questionable departure from the rules. In all three states, the courts were careful not to upset the established principles of customary law on the issue of family land tenure, even in a relatively urbanized environment as in Lagos state. For instance, in all the cases examined the issue of the consent of the head of the family was

paramount for the validity of the sale of family land. This was confirmed by the Supreme Court, for example in a case where the court held *inter alia* that a sale or lease of family land without the concurrence of the head of the family was void.

The same applied to criminal cases. The case audit was not able to identify any indication of abuse of substantial or procedural discretion. The cases examined revealed that the courts were consistent in the principles that guided them in the granting or refusal of bail to accused persons.

Bail pending trial is considered a constitutional right under Nigerian law. Being a constitutional right, the burden is on the prosecution who opposes bail to prove that facts relied upon by the applicant do not warrant the granting of the application. This is because there is a constitutional presumption in favour of the liberty and innocence of the individual. However, in the case of post-conviction bail, the position is different. The burden is on the applicant. This is so because the constitutional presumption of innocence is removed by virtue of the conviction, so also is the presumption in favour of liberty.

In practice, this principle translates into the following considerations when evaluating an application for bail: (a) the likelihood of an accused appearing for trial; (b) the seriousness of the charge; and (c) the duty of the prosecution to bring such facts to the notice of the court.

However, when the application for bail is submitted pending an appeal, the court of appeal will not grant bail unless there are exceptional and unusual reasons why bail ought to be granted to the applicant as follows: (a) the applicant is a first offender of previously good behaviour; (b) substantial grounds of law are involved in the appeal, with a prospect of success on appeal; and (c) having regard to the very heavy congestion of appeals pending in the courts, a refusal of bail to the applicant would have the result of the whole or a considerable portion of the sentence imposed on the applicant being served, before the applicant's appeal can be heard.

The above principles were recalled and observed in all cases under review. The only departure was explained on the ground of a technicality, where bail was granted in a murder case because there was no charge of murder, and thus the accused rights could not be subjugated to a non-existent charge.

VII. Legal assessment

A. Criminal law provisions

1. Bribery (active corruption)

Bribery is criminalized as an offence by various legislation in Nigeria. These are the Corrupt Practices and other Related Offences Act 2000, the Criminal and Penal Codes and the Electoral Act. There was a host of other legislation that has since been repealed with the enactment of the Corrupt Practices Act. Sections 18 to 23 of the Corrupt Practices Act deal extensively with the offence of bribery. Similarly, the Criminal Code, by virtue of sections 98 and 98A to D, provides sanctions for corrupt practices, including bribery. Section 98, paragraph 1, provides as follows:

“(1) Any public official (as defined in section 98D) who

“(a) corruptly asks for, receives or obtains any property or benefit of any kind for himself or any other person;

“(b) corruptly agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person on account of

“(i) anything already done or omitted, or any favour or disfavour already shown to any person, by himself in the discharge of his official duties or in relation to any matter connected with the functions, affairs or business of a Government department, public body or other organization or institution in which he is serving as a public official, or

“(ii) anything to be afterwards done or omitted, or any favour or disfavour to be afterwards shown to any person, by himself in the discharge of his official duties or in relation to any such matter as aforesaid, is guilty of the felony of official corruption and is liable to imprisonment for seven years.”

Section 98C of the Corrupt Practices Act deals with prosecution of judicial officers for offences under sections 98 and 98A and B. It provides as follows:

“(1) A judicial officer cannot be arrested without warrant for an offence under section 98, 98A or 98B.

“(2) No proceedings for an offence under section 98, 98A or 98B shall be instituted against a judicial officer except on a complaint or information signed by or on behalf of the Attorney General of the Federation or by or on behalf of the Attorney General of the state in which the offence is alleged to have been committed.

“(3) In this section, “judicial officer” means, in addition to the officers mentioned in the definition of that expression contained in section 1(1):

“(a) a member of a customary court;

“(b) a member of a juvenile court;

“(c) an arbitrator, umpire or referee;

“(d) a person called upon to serve as an assessor in any civil or criminal proceedings;

“(e) a member of a jury;

“(f) a member of a tribunal of inquiry constituted under the Tribunal of Inquiry Act; and

“(g) any person before whom, under any law in force in Nigeria or any part thereof, there may be held proceedings in which evidence may be taken on oath.”

2. Passive corruption

The Corrupt Practices Act, unlike earlier legislation on corruption, addresses issues such as gratification by and through agents (section 17); the offence of concealing gratification (section 24); an attempt to commit any offence under the Act (section 26); and the offence of using office or position for gratification (section 19).

3. Fraud as abuse of public power

The Corrupt Practices Act 2000 to a large extent deals with the offence of fraud by public officers. While section 8 addresses the issue of gratification by an official, section 9 deals with corrupt offers to public officers. Section 18 covers the offence of bribery of a public officer. The Advanced Fee Fraud and other Fraud related Offences Decree of 1995 criminalizes, by virtue of section 1, obtaining property by false pretence. Such false pretences include the use of premises for the offence (section 3); fraudulent invitation (section 4); receipt of a fraudulent letter (section 5); laundering of funds obtained through unlawful activity (section 7); and conspiracy to commit the offence (section 8). All these fraudulent offences apply with equal force to public officers and are considered an abuse of public power.

4. Embezzlement as abuse of public power

Embezzlement by public officers is an offence by virtue of the provisions of the Special Tribunal (Miscellaneous Offences) Decree No. 20 of 1987. Other legislation against embezzlement are the Recovery of Public Property (Special Military Tribunals) Decrees No. 3, 8 and 14 of 1984. Others are the Exchange Control (Anti-Sabotage) Decree, 1984 and the Banking (Freezing of Accounts) Decree, 1984. There is also the Civil Service Commission and other Statutory Bodies (Removal of Certain Persons from Office) Decree No. 78 of 1984.

5. Extortion as abuse of public power

Extortion is an offence under the Criminal Code. Section 404 of the Code provides:

“(1) Any person who, being employed in the public service of Nigeria, or in that of any other Government, corruptly and under colour of his employment:

“(a) demands or takes property from any person; or

“(b) compels any person to sell any property at other than its fair market value; or

“(c) obtains lodging from and against the will of any person without payment or for inadequate payment; or

“(d) compels, whether partially or wholly for his own profit, any persons to work without payment or for inadequate payment;
is guilty of a felony, and is liable to imprisonment for five years.

6. Illegal political party financing

Illegal political party financing is covered under sections 225 and 226 of the 1999 Constitution of the Federal Republic of Nigeria. Section 225, paragraph 3, stipulates that “No political party shall:

“(a) hold or possess any funds or other assets outside Nigeria; or

“(b) be entitled to retain any funds or assets remitted or sent to it from outside Nigeria.”

7. Laundering of corruption-related proceeds

Apart from the Money-Laundering Act, which deals with proceeds from illicit trafficking in narcotic drugs and psychotropic substances, the Corrupt Practices Act has provisions that tangentially deal with laundering of corruption-related proceeds. Section 43 deals with the investigation of share accounts. This allows for probing of corrupt proceeds that have been laundered. Similarly, section 45 provides for seizure of movable property held in banks. The law, by virtue of section 47 of the Act, also provides for forfeiture of property upon prosecution for an offence.

8. Trading in influence

Section 19 of the Corrupt Practices Act seems to have addressed the issue of trading in influence. The provisions specifically provide punishment for any public officer who uses his office or position to gratify or confer any corrupt or unfair advantage upon himself or any relation or associate of the public officer. Furthermore, section 22 of the Act partially talks of trading in influence, given the normal definition of the expression. It provides that “Any person who, without lawful authority or reasonable excuse, offers an advantage to a public servant as an inducement to or reward for or otherwise on account of such public servant’s giving assistance or using influence in, or having given assistance or used influence in (a) the promotion, execution or procuring of any contract or sub-contract.”

9. Bribery of foreign public officials

There is no direct enactment on the subject of bribery of foreign public officials. However, the general provisions on bribery and gratification as contained in the Corrupt Practices Act can be invoked against foreign public officials, especially for offences committed in Nigeria. What is not clear is whether such provisions can be used against foreign public officials for corrupt practices committed abroad.

10. Offering and acceptance of gratification

Section 10 of the Corrupt Practices Act covers offering and accepting gratification going beyond offering and acceptance of gratification, and covering also those who ask for, receive or obtain property or benefits of any kind for themselves or any other person.

11. Illicit enrichment

The extant laws in Nigeria, such as the Code of Conduct Bureau Act and Corrupt Practices Act, may not have adequately taken care of illicit enrichment in its technical sense, but there is a plethora of provisions, especially in the Corrupt Practices Act, to cater for this. Examples are sections 45, on seizure of movable property in banks; section 47, on forfeiture of property upon prosecution for an offence; and section 46, on prohibition of dealing with property outside Nigeria. It will however suffice for new legislation to be made specifically to regulate illicit enrichment.

12. Other offences

A host of other offences are covered by the Criminal and Penal Codes, the Corrupt Practices Act and many other enactments that criminalize corruption. Section 14 of the Corrupt Practices Act deals with offences committed through the postal system. Section 23 deals with the duty to report bribery transactions, recently invoked in a matter concerning a commissioner with the Independent Electoral Commission who was accused of receiving gratification from a group of solicitors. That case was based on a report made by the solicitors concerned, who otherwise would have been implicated.

The issue of corrupt practices by political parties is also covered in the Corrupt Practices Act. Section 2 of the Act gives a comprehensive interpretation of the term “political party”. Section 25 goes further, by criminalizing making false or misleading statements to the Independent Corrupt Practices and other Related Offences Commission.

13. Extraterritoriality of provisions concerning corruption

The Corrupt Practices Act, by virtue of section 66, gives jurisdiction over acts of corruption committed outside Nigeria. The law also gives power to the Independent Corrupt Practices and other Related Offences Commission to engage the service of the International Criminal Police Organization (Interpol). Corruption-related offences for which extradition can be sought are drug trafficking, advance fee fraud and corruption as provided under the Corrupt Practices Act and the Criminal and Penal Codes. The Government, to an extent, has a say in who is extradited. But this power, which is usually exercised by the Office of the Attorney General of the Federation, is exercised within the due process of law. The Extradition Act is very clear on the rules and practices of extradition in Nigeria and all extradition matters must be in accordance with the procedure contained in that Act.

14. Criminal liability of legal persons for corruption

There is still no law that provides for criminal liability of managers or heads of legal persons for corrupt practices within their area of responsibility. There is a need for legislation in this regard.

15. Criminal sanctions

Gratification by an official attracts a punishment of imprisonment for seven years (section 8, paragraph 1), as do corrupt offers to public officers (section 9) and corrupt demands by persons (section 10). Section 14 provides for punishment of

three and seven years, respectively, for offences committed through the postal system. Making a false statement or return attracts a punishment of seven years (section 16). Sections 19-25 provide a variety of punishments for offences ranging from bribery to dealing with or concealing gratification.

In addition to the deprivation of liberty as detailed above, the law also provides for pecuniary penalties in many respects. The sanctions extend to seizure and forfeiture of assets and property. A good example is section 20 of the Corrupt Practices Act, which stipulates as follows:

“without prejudice to any sentence of imprisonment imposed under this Act, a public officer or other person found guilty of soliciting, offering or receiving gratification shall forfeit the gratification and pay a fine of not less than five times the sum or value of the gratification which is the subject matter of the offence where such gratification is capable of being valued or is of a pecuniary nature, or 10,000 naira, whichever is higher.”

16. Asset forfeiture

(a) Direct corruption proceeds

Section 45 of the Corrupt Practices Act deals with seizure of movable property in banks. Section 47 provides that property can be forfeited upon prosecution. There are, by virtue of section 48, circumstances where forfeiture of property can take place even without prosecution. An example is where the judge is satisfied that such property had been obtained as a result of or in connection with an offence under sections 8 to 19 of the Act.

(b) Property which corresponds to that of proceeds

The Corrupt Practices Act provides for property corresponding to that of proceeds under sections 47 to 49 of the Act. Section 47, paragraph 2, provides that

“where the offence is proved against the accused or the property referred to in subsection (1) has been disposed of, or cannot be traced, the court shall order the accused to pay as a penalty a sum which is equivalent to the amount of the gratification or is, in the opinion of the court, the value of the gratification received by the accused, and any such penalty shall be recoverable as a fine.”

(c) Property, equipment or other instrumentalities used for corruption offences

The Corrupt Practices Act covers property, equipment or other instrumentalities under sections 45-48.

(d) Transformed or converted proceeds of corruption

This is provided for under sections 45 and 47 of the Act.

(e) Proceeds of crime mixed with property legally acquired; can the property be confiscated?

The law is silent on this but it does appear that the proper approach is to confiscate the property and push the onus onto the accused person to prove what was legally acquired as distinct from what was illegally acquired.

(f) *Income or benefits derived from proceeds of crime*

This can be seized from the bank by virtue of section 45 of the Corrupt Practices Act.

(g) *Profits acquired as consequence of bribery*

The law is silent on this. There is need for a provision to be made to accommodate this.

17. Other sanctions

(a) *Administrative fine*

This is not provided for by extant laws.

(b) *Deprivation of the right to perform certain jobs*

The Constitution of the Federal Republic of Nigeria 1999 disqualifies candidates for executive elective offices who have been convicted of fraud or offences involving dishonesty (see section 137, paragraph 1, subparagraph (e)).

(c) *Listing of companies*

Companies ordinarily may be blacklisted by administrative fiat for non-performance. It need not necessarily be for involvement in corrupt practices, although blacklisting for corrupt practices is rather more important. There is a need to legislate on this.

(d) *Liability of public officials for failure to implement measures to combat corruption*

There is no legislation on this.

(e) *Civil administrative confiscation*

Sections 45-49 are adequate to cover this.

B. Criminal procedure law

1. Witness protection

There is no legislation protecting witnesses in fraud-related or corrupt-practices offences. This is crucial for effective prosecution of corruption cases. What the Corrupt Practices Act does in section 64 is to protect informers and information. This is not exactly the same as protecting witnesses.

2. Undercover operations

There is a need for legislation on this. At the moment there is no law regulating undercover operations. What section 55 of the Corrupt Practices Act has done is to make it possible for evidence of agents provocateurs to be admissible in court. That does not subtract from the need for detailed provisions regulating undercover operations.

3. Random and targeted integrity testing

There is no law on this. There is also no regulation governing integrity testing. In the absence of a law, at least it is desirable that there should be a regulation for it. It is, however, not out of place, that, administratively, random and integrity testing are utilized by some agencies.

4. Wiretapping and electronic surveillance

There is no law providing for this. The prospect of enacting legislation must be viewed against the background of the Constitution, which guarantees rights of privacy of individuals.

5. Access to documents

There is a vast array of legislation that provides access to otherwise confidential documents. Examples can be found in the Money-Laundering Act and the Failed Banks Act. Section 19 of the Money-Laundering Act clearly provides that the director of investigation or an officer of the agency authorized by regulations in that regard may demand, obtain and inspect the books and records of a financial institution to confirm compliance with the provisions of the decree.

6. Immunity from investigation and prosecution

The President, Vice-President, governors and deputy governors are immune from prosecution. However the Corrupt Practices Act, in section 52, provides for the appointment of an independent counsel in special circumstances to investigate those officers for alleged corrupt practices.

C. Institutional implementation framework

1. Anti-corruption agency

The Corrupt Practices Act provides for the establishment of an Independent Corrupt Practices and other Related Offences Commission. Section 3, paragraph 3, provides that the Commission shall consist of a chairman and 12 other members, 2 of whom shall come from each of the six geopolitical zones. Section 5 provides for the powers and immunities of officers of the Commission. The general duties of the Commission, part of which is basically to receive and investigate a complaint and prosecute offenders, are well stipulated in section 6 of the Act.

2. Ombudsman commission

There is in existence the Public Complaints Commission, which is established by law. It has the same functions as the Ombudsman. The Commission has powers to inquire into complaints by members of the public concerning the administrative action of any public authority and companies or their officials and other matters ancillary thereto.

The Public Complaints Commission consists of a chief commissioner and such number of other commissioners as the National Assembly may, from time to time, determine. The Commission has the power to establish such number of branches of

the Commission in the states of the Federation as the National Assembly may from time to time determine.

In any case where a commissioner discovers that a crime may have been committed by any person, he must report his findings to the appropriate authority or recommend that that person be prosecuted. The law empowers a commissioner to summon in writing any person who, in the opinion of the commissioner, is in a position to testify on any matter before him.

3. Specialized units within the police

There are special units in the police force for fraud and corrupt practices offences. This is purely for administrative convenience and for efficiency.

4. Corruption courts

In a sense there are no courts specially designated as corruption courts. However, there are courts among the state high courts set aside especially to handle corruption cases.

5. Financial investigative units

Within the Nigerian police force, there is a unit that specializes in investigating financial crimes, fraud and corrupt practices.

6. Institution of the Inspector General of Police

There exists an office of Inspector General of Police. He is the highest-ranking police officer in Nigeria and administratively is the head of the police force. He is answerable only to the President.

7. Role of the mass media

The media is very useful in the sensitization of the public against participating in fraudulent or corrupt practices. They can also help to expose corrupt officers by blowing the whistle as and when the need arises.

8. Organizational aspects of implementation mechanisms

Coordination of efforts by various enforcement authorities

Ordinarily, all enforcement agencies work towards a common objective. In this regard, the police, the officers of the Independent Corrupt Practices and Other Related Offences Commission, the state security services and officers of the National Drug Law Enforcement Agency are expected to coordinate their activities. At the time of the survey, it did not appear that this was well streamlined, but gradually all the concerned agencies are becoming alive to their responsibilities.

Central contact point that can be used in cases of corruption

The Independent Corrupt Practices and other Related Offences Commission, by virtue of the Corrupt Practices Act, is sufficiently empowered to handle cases of corruption. Administratively, the Commission has investigative units as well as a

prosecution department. This makes the Commission the central contact point for corruption cases.

Weak control structures: the control agency in Nigeria

The control agency in Nigeria is the Independent Corrupt Practices and other Related Offences Commission. It is not correct to consider the control structures as weak. The law in this regard appears adequate and appropriate.

Existence of an independent authority where claims can be made

As mentioned above, there is in existence a Public Complaints Commission, which is the equivalent of an ombudsman. However, the Independent Corrupt Practices and other Related Offences Commission is the appropriate authority to deal with corruption-related matters.

Existence of a national corruption register

There is for the time being no register on national corruption. The need for such a register cannot be overemphasized.

Existence of specialized corruption investigators and technical devices

There is a unit of the Independent Corrupt Practices and other Related Offences Commission charged with the responsibility to investigate the authenticity or otherwise of petitions made to the Commission. It can safely be assumed that they have all the necessary tools for carrying out their statutory function.

Professional formation of anti-corruption agencies

The Independent Corrupt Practices and other Related Offences Commission has an organization that is well defined by statute. The powers and functions of the chairman, commissioners and administrative staff are clearly stipulated by the law. The hierarchy of authority is also very well specified.

9. Procedural aspects of the implementation mechanism

Administrative and criminal procedures in corruption cases

Where there is a petition to the Independent Corrupt Practices and other Related Offences Commission against a public officer alleging corrupt practices, the Commission by law is mandated to investigate the allegation if there is a fair case against the suspect. When the investigation is completed and if the Commission finds sufficient evidence to commence prosecution, it sets the machinery in motion to prosecute. Bringing an accused person to court for corruption follows the same process as other criminal matters. As pointed out above, it is basically the responsibility of the Commission to initiate prosecution for corruption cases. However, where the police is the organ in charge of prosecution, then action can be commenced at the magistrate court. As stated, the accused, as in all criminal cases, is presumed to be innocent until proven guilty. After the prosecution has made its case, it is left for the accused to put their case across. Both sides are expected to provide evidence to prove or rebut the case. The court is then invited to rule on the

matter. It is crucial to mention that being a criminal case, proof must be beyond reasonable doubt.

Corruption-related caseloads

From information available in the Commission, there are presently not more than 10 cases charged to court by the Commission. However, where other corrupt practices, such as advance fee fraud, money-laundering, drug offences and bank fraud are taken into consideration, there are presently 150 cases in various courts of record in Nigeria. These cases are presently being prosecuted. There may well be other cases with the prosecutors that have not been filed in any court. This data is not available.

Sentencing

Most of the cases are still pending in court. The Commission is yet to secure a conviction. Indeed, most of the cases charged to court so far have suffered serious setbacks as a result of a series of interlocutory applications.

Difficulty of proving cases of corruption

One major difficulty in proving corruption is the unwillingness of witnesses to testify. This is the result of a lack of protection by the law and indeed by the Commission. Other difficulties include interlocutory applications and the high standard of proof in criminal cases (beyond reasonable doubt). Poor investigative processes and the inability to have certain allegations corroborated as required by the law also create difficulties in proving corruption cases.

Too delayed and contested criminal procedures

The criminal justice system is usually slow for a variety of reasons. The first is that there are a limited number of prosecutors handling many case files. This is further compounded by the fact that there is no mandatory summary trial. Interlocutory applications also create bottlenecks and ultimately delay the entire process. More significantly, witnesses are usually not forthcoming and this makes proof of evidence impossible. Delay is also experienced where the procedure stipulates that a prima facie case must be established before actual trial can commence.

Statutes of limitation

Criminal cases in Nigeria endure in perpetuity. There is no statute of limitation for corrupt practices.

D. Civil law provisions

(a) Civil remedies for “victims” of corruption

Nigerian law does not provide for civil remedies in corruption cases;

(b) Compensation for damage resulting from corrupt behaviour

Nigerian law does not provide for this;

(c) *State compensation for damages resulting from acts of corruption by public officials*

Nigerian law does not provide for this;

(d) *Validity of contracts*

The law is silent on this. It is crucial that the law of contract as practised under common law jurisdictions is invoked in determining the validity of contracts.

E. International judicial cooperation

1. International legal assistance for extradition of offenders

Nigeria has treaties on mutual legal assistance on extradition and criminal matters with Algeria, Thailand, the United Kingdom of Great Britain and Northern Ireland, the United States and a host of African countries. The treaties have been ratified and are in force. However it does not appear that assistance so far extends to corrupt practices. That notwithstanding, the Extradition Act appears flexible enough to be invoked in cases of corrupt practices.

2. Seizure, freezing, confiscation and return of proceeds

Nigeria has mutual legal assistance agreements with the United Kingdom and the United States. Seizure and confiscation of assets apply when a prima facie case of corruption is established against the accused person or the person has been tried and convicted by law. The essence of seizure and freezing is not only to preserve the proceeds, but also to ensure that neither the accused nor his heirs have access to the proceeds of corrupt practices.

3. Mutual recognition of foreign criminal sentences on corruption matters

The law against double jeopardy makes it imperative that foreign criminal sentences are generally recognized and respected in Nigeria. This also extends to sentences on corruption matters. However, agreement with the United Kingdom and the United States in this regard seems to have created sufficient latitude to strengthen the Extradition Act as far as those countries are concerned.

F. Other relevant legislation

1. Code of conduct for public officials

The Code of Conduct Bureau Act regulates the conduct of public officers. The enactment is a creation of the Constitution. It provides against conflict of interest and empowers the Bureau to prosecute violations of the regulations in the code of conduct tribunal.

2. Code of conduct for judges

There is in existence a code of conduct for judges. It stipulates the minimum standards expected of them and regulates their conduct and activities in their day-to-day life.

3. Code of conduct for lawyers

There is a code of conduct for lawyers. This is derivable from the legal practitioners act. It provides for minimum standards of behaviour expected of lawyers. It also stipulates sanctions for breach of acceptable conduct.

4. Taxation rules

There is a statute regulating all forms of taxation, including income tax, property tax and commercial tax. The rules are specified. However, it should be noted that the incidence of tax evasion and avoidance is very high.

5. Freedom of information

There is no categorical enactment that guarantees freedom of information. Indeed, there are currently proposals for such an enactment. However, many jurists and publicists argue that the freedom of expression clause contained in section 39 of the Constitution may be given a flexible interpretation to cover issues involving freedom of expression. This notwithstanding, it is expected that special legislation dealing with freedom of information will be more useful and relevant.

6. Financial disclosure regulations

There is no law in force that provides for compulsory financial disclosure.

7. Accounting/auditing standards for private legal persons

The Corporate Affairs Commission Act enjoins all private legal persons to prepare a comprehensive account of their company at the end of the financial year. Such accounts are expected to be audited by qualified auditors.

8. Accounting/auditing standards for public officials

The offices of the Accountant-General and Auditor-General are by virtue of the Constitution expected to ensure compliance with standards prescribed by the rules of public service with respect to financial matters.

9. Incompatibility of public office with certain jobs

In order to avoid conflict of interest, public officers are not expected to occupy or accept jobs that are likely to conflict with the public offices they occupy. The Constitution, the Code of Conduct Act and the code of conduct for judges are some of the enactments that provide against conflict of interest.

10. Regulation of public procurement

There is no statute regulation of this. However, there are procedural or administrative guidelines that govern public procurement or award of contracts.

11. Whistle-blower legislation

The need for whistle-blower legislation in Nigeria cannot be overemphasized. The Corrupt Practices Act unfortunately did not provide for this. For an effective implementation of the Corrupt Practices Act, it is highly recommended that whistle-blower legislation should be enacted.



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